

1 BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

2  
3 ORIGINAL

4 IN THE MATTER OF QWEST CORPORATION'S  
5 SECTION 271 APPLICATION AND MOTION  
6 FOR ALTERNATIVE PROCEDURE TO MANAGE  
7 THE SECTION 271 PROCESS

Case No. 3269

8  
9  
10 TRANSCRIPT OF PROCEEDINGS

11 JANUARY 22, 2002

12 DAY ONE

13  
14 BE IT REMEMBERED that on the 22nd day  
15 of January, 2002, this matter came on for  
16 hearing before ELIZABETH C. HURST, Hearing  
17 Examiner, and PATRICIA O'BRIEN, Certified  
18 Court Reporter of the firm SANTA FE  
19 DEPOSITION SERVICE, 110 Delgado, Santa Fe,  
20 New Mexico, at the Public Regulation  
21 Commission, 224 E. Palace Avenue, Santa  
22 Fe, New Mexico.  
23  
24  
25

A P P E A R A N C E S

PRESIDING: ELIZABETH C. HURST, ESQ.

FOR STAFF: MARYANNE REILLY, ESQ.  
Staff Counsel  
224 Palace Avenue  
Santa Fe, New Mexico 87501

FOR QWEST: THOMAS W. OLSON, ESQ.  
ANDREW MONTGOMERY, ESQ.  
Montgomery & Andrews  
325 Paseo de Peralta  
Santa Fe, New Mexico 87501

-and-

JOHN MUNN, ESQ.  
Qwest Law Department  
c/o Qwest Corporation  
1801 California, Suite 5100  
Denver, Colorado 80202

FOR AT&T: GARY WITT, ESQ.  
AT&T Law Department  
1875 Lawrence Street  
Room 1575  
Denver, Colorado 80202

-and-

W. MARK MOWERY, ESQ.  
Rodey, Dickason, Sloan, Akin & Robb  
123 E. Marcy Street  
Suite 101  
Santa Fe, New Mexico 87501

FOR AG: DAVID MITTLE, ESQ.  
Assistant Attorney General  
P.o. Drawer 1508  
Santa Fe, New Mexico 87504-1508

HEARING EXAMINER: Good morning. My name  
is Hurst. I am the designated Hearing  
Officer for today's docket, Utility Case No. 3269.

We are here today specifically pursuant to a Commission Order that was issued on the 6th of November of 2001.

That particular Order was amended by an Order that I issued setting today's time and date for hearing.

With me today is Patricia O'Brien of Santa Fe Deposition. Should anyone need anything to do with the transcripts of today's proceeding, they will need

1 to deal with her directly.

2 Before I take appearances for the record,  
3 could we have anybody here that is here to give public  
4 comment in today's matter?

5 (No response.)

6 HEARING EXAMINER: Pat, if you would, let  
7 the record reflect that no one acknowledged that they  
8 wanted to give any public comment to the Commission.

9 So let's go ahead and before we deal with  
10 pending procedural matters that I have and perhaps  
11 pending procedural matters that the parties have,  
12 let's go ahead and get appearances on the record.

13 Tom, if you would start us off, please.

14 MR. OLSON: Yes. Thomas W. Olson and  
15 Andrew S. Montgomery of Montgomery & Andrews, Santa  
16 Fe. And also I'm pleased to introduce John Munn with  
17 the Qwest Law Department.

18 We filed a pro hac vice Motion for  
19 Mr. Munn asking that he be admitted for purposes of  
20 this proceeding on Friday. And we three will be  
21 appearing on behalf of Qwest Corporation.

22 HEARING EXAMINER: All right. Thank you,  
23 Mr. Olson. Sir?

24 MR. MOWERY: Mark Mowery on behalf of  
25 AT&T. We have two other AT&T representatives here as

1 well.

2 HEARING EXAMINER: Mr. Mowery, are you or  
3 Mr. Witt going to --

4 MR. WITT: With your permission, Your  
5 Honor, I'll be the lead attorney for AT&T in this  
6 matter.

7 For the record, my name is Gary Witt, with  
8 the AT&T Law Department in Denver. Thank you.

9 MR. MITTLE: Good morning, Madam Hearing  
10 Examiner. My name is David Mittle. I'm an Assistant  
11 Attorney General with the Office of the Attorney  
12 General for the State of New Mexico.

13 HEARING EXAMINER: Good morning, sir.

14 MS. REILLY: Good morning, Ms. Hurst.  
15 Maryanne Reilly for Staff. Staff witness, Mike  
16 Ripperger, is with me and we have a new Staff member,  
17 Brian Harris with us observing.

18 HEARING EXAMINER: Good morning. Thank  
19 you all for appearing here today.

20 Let's start off with some pending Motions.  
21 Well, let me, before I do that, other than what's been  
22 filed in the record, do we have any pending or unfiled  
23 procedural Motions that we need to deal with here this  
24 morning? Ms. Reilly?

25 MS. REILLY: Thank you, Ms. Hurst.

1 Although we prefer to proceed as expeditiously as  
2 possible with this Track A hearing, unfortunately the  
3 Commission has scheduled a working session involving a  
4 contested public interest matter for their work  
5 session, which they expect to start at approximately  
6 1:30 p.m. And Staff, being only the two of us, needs  
7 to cover both matters. We were hoping for a brief  
8 continuance this afternoon so we could attend the  
9 Commission's work session.

10 HEARING EXAMINER: And what continuance  
11 time frame are you requesting?

12 MS. REILLY: Well, it's a little hard to  
13 predict because the Commission doesn't necessarily set  
14 matters for a time certain.

15 HEARING EXAMINER: Isn't the work session  
16 at 9:30? Isn't it starting right now?

17 MS. REILLY: Unless I'm mistaken. I  
18 thought it was at 1:30. I can check on that.

19 HEARING EXAMINER: Mr. Ripperger, why  
20 don't you check.

21 MS. REILLY: I apologize. Things are a  
22 little hectic.

23 HEARING EXAMINER: All right. So Staff,  
24 basically, my understanding, Ms. Reilly, is what you  
25 said is that Staff would like to attend the work

1 session because it has a 271 issue that the Commission  
2 is going to do something with?

3 MS. REILLY: The agenda indicates that  
4 Chairman Schaefer is going to bring up for discussion  
5 and input the matter of how the public interest  
6 component of Qwest's Section 271 case, part of this  
7 same docket, should be handled procedurally.

8 There's been filings made by the parties  
9 that have different proposals. Qwest, the Attorney  
10 General and Staff have all made filings. It's on the  
11 agenda for consideration in the working session. That  
12 starts --

13 MR. RIPPERGER: What is posted on the  
14 board, Madam Hearing Examiner, it says an open meeting  
15 at 9:30. Then posted above it is a notice for a  
16 working session following the opening meeting.

17 HEARING EXAMINER: Let's go off the record  
18 here.

19 (Whereupon, a brief discussion was  
20 held off the record.)

21 HEARING EXAMINER: Back on the record. We  
22 have had a brief discussion off the record, sort of a  
23 chicken and egg discussion.

24 It's been determined that we don't know  
25 specifically which one is going to come first, but

1 there's going to be a work session that contains a 271  
2 item. I just posed the question so I want to come  
3 back on the record.

4 Ms. Reilly, are you asserting to the  
5 Hearing Examiner that this is an important matter that  
6 no one else can handle?

7 MS. REILLY: Well, Ms. Hurst, it is an  
8 important matter, yes. We have been -- Mr. Ripperger  
9 and I have been, through the pendency of this case, a  
10 two-person team. Mr. Harris is joining us but he's  
11 not up to speed at this point.

12 If the Hearing Examiner were to deny our  
13 request for a continuance, we have done our best to  
14 brief Mr. Noble, but he has not been involved in this  
15 matter and it would certainly be a lesser degree of  
16 advocacy at the opening meeting than Mr. Ripperger and  
17 I could bring to bear. If you deny our Motion, that's  
18 how we will proceed.

19 But it is an important matter.  
20 Mr. Ripperger and I are the ones who have been  
21 responsible for it. We are the only ones who have  
22 been responsible for it and we know more about it than  
23 Mr. Noble, quite a bit more.

24 HEARING EXAMINER: When did you find out  
25 about this?



1 MS. REILLY: Well, I saw the agenda and I  
2 left a message with Commission Counsel at the end of  
3 last week. I couldn't tell you exactly when the  
4 agenda came out. It might have been Friday.

5 HEARING EXAMINER: All right.

6 MS. REILLY: I left a message with him  
7 that said, I don't know if the Commission is aware  
8 that we have this conflict. But we need to be at the  
9 Track A hearing and maybe there is some possibility  
10 that the Commission could change its schedule.

11 I didn't hear back from Commission Counsel  
12 that that wouldn't be possible and that the Commission  
13 would want us in attendance until this morning  
14 immediately before this hearing. So I apologize.

15 HEARING EXAMINER: All right. So you have  
16 asked the Commission for a continuance?

17 MS. REILLY: Through Commission Counsel,  
18 yes, I did.

19 HEARING EXAMINER: All right. Thank you.  
20 Is there any objection to recessing our hearing that  
21 we are about to start and reconvening at 1:30 based  
22 upon the Motion of Staff to be able to attend and  
23 participate in an item which has been characterized as  
24 important to the 271 process?

25 Mr. Munn, let's go ahead and deal with

1       yours before I let you say anything.

2               We do have an outstanding pro hac vice  
3       Motion for Mr. Munn.

4               Is there any objection to it?

5               MR. MITTLE:  No objection.

6               HEARING EXAMINER:  Hearing no objection,  
7       Mr. Munn, your pro hac vice Motion will be granted.

8               Welcome to New Mexico, sir.

9               MR. MUNN:  Thank you, Your Honor.  It's  
10       good to be here.

11               Qwest does not, I guess, officially object  
12       to Staff's Motion.  We want to work with Staff in  
13       their ability to be in two places at once.

14               I would note that Qwest -- I can certainly  
15       say I was not aware of this Request for Continuance  
16       until I just heard it.

17               We have me and then witnesses in from out  
18       of state.  We are, I guess, keenly aware that we want,  
19       sort of, the case, when we do start this hearing, to  
20       move along as efficiently as possible and would  
21       request that if we can get some type of ballpark range  
22       for how long the hearing would take, so, like, some  
23       type of estimate we would done at the end of the day,  
24       tomorrow, some ballpark.  Not that people are going to  
25       be held to that, but we have a lot of people in from

1 out of town and we are trying to gauge how that will  
2 work and if there are any continuance requests that we  
3 haven't heard of. We would just like to flesh that  
4 out so we can plan appropriately.

5 HEARING EXAMINER: All right. Thank you,  
6 Mr. Munn.

7 Any objection from AT&T?

8 MR. WITT: No objection, Your Honor.

9 HEARING EXAMINER: Mr. Mittle?

10 MR. MITTLE: No objection.

11 HEARING EXAMINER: Although I would have  
12 liked to have seen something in writing and I would  
13 have liked to have seen a notification to the other  
14 parties upon the immediate possibility of this Motion  
15 coming into being, I do realize that sometimes  
16 emergency situations or -- or should I say urgent  
17 situations do sometimes happen.

18 There being no objection to Staff's Motion  
19 and with a note of concern -- Pat, I hope this doesn't  
20 disrupt things too much to our Court Reporter -- I  
21 will grant Staff's Motion.

22 I will also ask the parties to, sometime  
23 between now and 1:30, which is when I propose to  
24 convene this hearing -- reconvene this hearing -- I  
25 would like the parties to get together and try to give

1 some idea -- trying to err on the side of caution, I  
2 booked the room for all week so we don't have to worry  
3 about other Hearing Examiner's stealing our space.

4 But that being said, I sort of based my  
5 estimate, if I can recall correctly last we met, I  
6 believe it was on Motions to Compel, I think I was  
7 told two to three days, Mr. Munn. But, again, I will  
8 instruct the parties, please, sometime between now and  
9 1:30, try to give each other an idea, not being held  
10 of course to that, but whether or not we will finish  
11 today, tomorrow or what your estimation is.

12 That being said, I'm in hopes that what  
13 the parties want to participate in will have taken  
14 place by 1:30. If not, I guess you are going to have  
15 to come back and we will have to discuss it again.

16 Staff's Motion to continue being granted,  
17 we are recessed until 1:30. Thank you.

18 MS. REILLY: Thank you.

19 (Whereupon, a recess was  
20 taken.)

21 (Whereupon, the hearing resumed at 1:30  
22 p.m.)

23 HEARING EXAMINER: Back on the record. We  
24 are returning from our recess this morning.

25 Basically, if I recall correctly, we got

1 appearances this morning and then we also had the  
2 opportunity to -- I guess I granted two Motions, the  
3 Motion to Recess and the pro hac vice for Mr. Munn.

4 I have a couple of other procedural  
5 matters that I need to discuss. Do we have any  
6 non-filed other procedural matters that we need to  
7 deal with?

8 Mr. Munn, were the parties able to get  
9 with you and address your request for some type of  
10 timing?

11 MR. MUNN: Yes, Your Honor.

12 HEARING EXAMINER: Okay. You are going to  
13 have to, for the Court Reporter's convenience, we need  
14 to step up to the podium. Sir?

15 MR. MUNN: Thank you. Yes, Your Honor.  
16 We did talk before we broke and it seems to me that we  
17 should be in the target range of finishing this  
18 hearing tomorrow based on kind of what I'm hearing  
19 from different groups.

20 HEARING EXAMINER: All right.

21 MR. MUNN: So that's certainly our hope  
22 and information I'm getting, leads me to believe we  
23 can do that.

24 HEARING EXAMINER: Excellent. I'll be  
25 here. We can always come back Thursday, Friday,

1 Saturday, whenever you want.

2 All right. Not hearing that we have any  
3 other procedural matters that we need to deal with, we  
4 can deal with the ones that I have. It looks like to  
5 me that at this particular point we have two pending  
6 Motions and three responses to the Motions.

7 We have a Qwest Motion to Withdraw  
8 information concerning the Intrado report. That was  
9 filed on December 27th of last year.

10 The Attorney General filed a response to  
11 that Motion on the 2nd of January and Staff filed a  
12 response to that Motion also on the 2nd of January.

13 The other Motion that we still have  
14 pending that I'm aware of that relates to this  
15 particular Track A hearing was a Motion that was filed  
16 on the 4th of January by Qwest. It is a Motion to  
17 Strike the testimony of the Staff witness and AT&T's  
18 witness. That would be to strike the testimony that  
19 relates to the 12-27 Motion.

20 Then finally, we have the Staff response  
21 to the Qwest 1-4 Motion, and that was filed on January  
22 9th.

23 Mr. Olson, Mr. Montoya, Mr. Munn, is Qwest  
24 still maintaining its Motion to Withdraw and Motion to  
25 Strike at this time?

1 MR. MUNN: Yes, Your Honor, and we are  
2 prepared to argue that Motion today.

3 HEARING EXAMINER: Is there anything  
4 additionally that you haven't put in the written  
5 Motion that you propose to argue here today?

6 MR. MUNN: Well, I think laying out the  
7 facts of the Motion maybe a little bit more fully with  
8 how this came about is something that I would propose  
9 to do.

10 Also, the bases for the Motion, just  
11 organize them for you so that it's a little bit more  
12 direct, I think.

13 And then oral argument that I can hit  
14 points that I think you should consider.

15 HEARING EXAMINER: All right. But I'm not  
16 hearing you tell me that there's anything --

17 MR. MUNN: There's not a new piece of  
18 evidence or anything, for example. I mean, we are  
19 still not putting forward the Intrado report because  
20 we've gotten the CLEC survey responses, at least the  
21 majority of CLECs have responded to the Commission's  
22 survey, so we're not putting that evidence forward for  
23 the Commission to consider regardless of how this  
24 Motion is ruled upon.

25 So I think that taking time to address an

1 issue that we are not even asking the Commission to  
2 consider for purposes of Track A will simply be an  
3 unnecessary waste of the resources of Your Honor, the  
4 Commission Staff, the AG's Office and all of the  
5 parties. It won't help the Commission, really, with  
6 what we need to be deciding today -- or in this  
7 hearing we need to be developing a record on which the  
8 Commission can look at to make its determination for  
9 Track A. And since Qwest is not putting forward the  
10 evidence on E911 for the Commission to consider for  
11 Track A, I don't see what purpose it does other than  
12 to make the transcript a lot fatter and harder for  
13 everyone to plow through.

14 HEARING EXAMINER: All right, sir.  
15 Mr. Mittle, is the Attorney General still maintaining  
16 its responses filed on the 2nd of January?

17 MR. MITTLE: Thank you, Madam Hearing  
18 Examiner. I was just reviewing the Motion, the  
19 response to the Motion.

20 In our response the Attorney General first  
21 requested that the report be produced before  
22 determining whether it should be withdrawn. And  
23 pursuant to the Order of compelling production of the  
24 Intrado report it was.

25 The concern that I have today is -- and it



1 comes from reading the FCC Orders in a lot of cases  
2 where the RBOC, in this case Qwest, or hypothetically  
3 Qwest, would then turn around and use this Intrado  
4 report somehow in connection with their Application  
5 for Section 271 relief.

6 And what I've not heard from Qwest is that  
7 they are not arguing it today before you with respect  
8 to Track A. But what I don't hear from Qwest is  
9 whether they are going to now turn around and use this  
10 Intrado report to prove up Track A to the FCC.

11 So to that extent, I would oppose the  
12 Motion to Withdraw because if they submit it late to  
13 the FCC the parties will be compromised in their  
14 ability to test the truthfulness of the information.

15 HEARING EXAMINER: Ms. Reilly, does Staff  
16 still maintain its response to the 12-27 Motion and  
17 its response to the 1-4 Motion?

18 MS. REILLY: Ms. Hurst, yes, we do.

19 HEARING EXAMINER: All right. Based upon  
20 my review of the two Qwest Motions and the responses  
21 filed by the Attorney General and Staff, and not  
22 hearing anything today to make me think that oral  
23 argument is necessary on these two particular Motions,  
24 I'm ready to rule on the Motions.

25 As to Qwest's 12-27 Motion to Strike, I

1 hereby deny that Motion. However, what I'm saying as  
2 far as the denial -- pardon me, the Motion to Withdraw  
3 the Intrado report, I will note for the record and I  
4 will allow the record to reflect, that Qwest wishes to  
5 change its testimony by amending it as of the date of  
6 filing of the Motion to Withdraw, that being 12-27.  
7 So the record will note that. The witnesses may  
8 proceed in that fashion to testify here today with  
9 amended testimony.

10 I will not, however, strike Qwest's or  
11 allow Qwest to withdraw the testimony that it's  
12 previously filed in this case. There are different  
13 purposes and uses for testimony and I do find that the  
14 other parties will be allowed to testify as to the  
15 testimony that's still here in the record. Therefore,  
16 denying the Motion to Withdraw the Intrado information  
17 leads to the denial of the Motion to Strike.

18 I will not strike Mr. Ripperger's nor  
19 Ms. Roth's testimony concerning the previously filed  
20 -- that being prior to the amendment of Qwest's  
21 testimony.

22 Do we have any further pending Motions  
23 that I need to deal with before -- pending Motions or  
24 other procedural matters?

25 Let me say that we do have some

1 confidential information in this docket. I will  
2 expect the parties to handle this as we generally do.  
3 The parties need to designate before the dissemination  
4 of any propriety information. You need to actually  
5 say, we are going into a matter that's been deemed  
6 confidential or has a claimed confidential status to  
7 alert the Court Reporter that we are doing that. Then  
8 the part that we generally forget but we need also to  
9 do is to basically also alert the Court Reporter again  
10 that we have finished with the confidential  
11 information so that that particular part of the  
12 transcript doesn't need to be sealed. I will  
13 encourage and expect the parties to have as brief a  
14 mention as they think they can present their case  
15 with.

16           Someone didn't turn their cell phone to  
17 the non-noise position, but I can't see anybody with a  
18 big grin, so we will move on.

19           Anyway, you need to do that, not only for  
20 the Court Reporter but also -- well, let me ask this  
21 and maybe this can help us. Is there anyone in this  
22 room right now that hasn't signed both the regular  
23 confidential information and the speaker confidential  
24 information for Track A that needs to?

25           MR. MONTGOMERY: Your Honor, could I

1 address that? Under the terms of the Supplemental  
2 super confidential Protective Order, only one  
3 representative for Qwest is allowed access to the  
4 information. I was the person designated as that  
5 person. But only one attorney and no client  
6 representatives are allowed to review the information.

7 That leads to a question that I wanted to  
8 raise with the Hearing Examiner, which is whether to  
9 avoid logistical difficulties, would it be possible  
10 for me to pass the baton, so-to-speak, to Mr. Munn so  
11 that the hearing room doesn't need to be cleared every  
12 time someone introduces a super confidential document  
13 and hands it to Mr. Munn.

14 Do you understand what I'm saying?

15 HEARING EXAMINER: Have your witnesses and  
16 your representatives in the back of the room,  
17 Mr. Montgomery, are they all signed up on that?

18 MR. MONTGOMERY: Under the super  
19 confidential Protective Order, no witness is allowed  
20 access.

21 HEARING EXAMINER: It's just you?

22 MR. MONTGOMERY: Only one attorney for a  
23 party is allowed to have access. Now, I will say that  
24 at least one other party in this proceeding has  
25 already designated two attorneys, contrary to the

1 terms of the Supplemental Protective Order.

2 But by the terms of the Supplemental  
3 Protective Order Qwest is entitled to have only one  
4 representative, and that has to be an attorney, with  
5 access to the super confidential information.

6 What I would be asking for is a variance  
7 from that requirement so that a second attorney,  
8 Mr. Munn, could also have access to that information  
9 and participate --

10 HEARING EXAMINER: Was that the  
11 Commission's super Protective Order or was that my  
12 amendment to include other information in that  
13 Protective Order?

14 MR. MONTGOMERY: I believe it's the  
15 Commission's --

16 HEARING EXAMINER: Original.

17 MS. REILLY: We don't have any objection  
18 to the exemption Mr. Montgomery proposed.

19 HEARING EXAMINER: Mr. Witt, does AT&T  
20 have an objection so we can allow the -- apparently,  
21 Mr. Munn, seems so far -- I haven't been told how  
22 Qwest plans to divvy up the case, but at least right  
23 now he's the engine of the train here.

24 So do you have any objection that he be  
25 allowed to handle these documents?

1 MR. WITT: Your Honor, let me address it  
2 this way. I don't have any specific objection to  
3 Mr. Munn handling these documents.

4 However, I would point out that it seems  
5 to me on my reading of the extraordinary Protective  
6 Order that the intention was to allow the use of  
7 aggregated information and not to allow the use of  
8 disaggregated information in the course of the  
9 proceedings.

10 So that to the extent that aggregated or  
11 collected information on a statewide basis is being  
12 used, I think it would be AT&T's position -- and I'm  
13 guessing it would be the other parties, but they will  
14 have to speak for themselves -- that that information  
15 would not be confidential.

16 So to the extent that you are not  
17 identifying individual CLECs but instead you are  
18 aggregating information, then I think that that would  
19 be another alternative way of going around this  
20 particular difficulty.

21 HEARING EXAMINER: Okay.

22 MR. WITT: Thank you.

23 HEARING EXAMINER: Mr. Mittle, any  
24 objection from the Attorney General that Mr. Munn be  
25 allowed the variance during the hearings to handle the

1 confidential documents?

2 MR. MITTLE: Madam Hearing Examiner, I  
3 neither object nor do I concur. I have no position.  
4 This is an issue between the CLECs and the RBOC. I  
5 think they should resolve to keep this material  
6 confidential as it's supposed to be.

7 HEARING EXAMINER: All right.

8 MR. MUNN: Your Honor, one observation.  
9 We talked about clearing the hearing room. Based on  
10 the super confidential Order, there was only, like,  
11 one attorney at Qwest that could see this. So I  
12 wouldn't even have a witness that could -- I mean, my  
13 witnesses would have to leave the room as well under  
14 that Order. So it's somewhat odd. The witness can't  
15 be questioned on something that the witness can't even  
16 see. I'm not going to bring up super confidential  
17 numbers with my witnesses.

18 So I wanted to highlight that. I don't  
19 know what the other parties' intentions are, but that  
20 would be a strange situation because the witnesses  
21 couldn't even know what they were being questioned  
22 about under that Order.

23 MR. MITTLE: If it helps, Madam Hearing  
24 Examiner, I'm not planning on using this super  
25 confidential information at this time, either.

1 MR. WITT: And I can, likewise, represent  
2 that I have no intention of using that information  
3 myself, either.

4 MS. REILLY: Well, except to the extent  
5 that it's present in the record, it's hard for me to  
6 think through exactly whether I might need to use it,  
7 but I don't think so.

8 HEARING EXAMINER: All right. I didn't  
9 realize this was going to be so problematic. Maybe I  
10 shouldn't have brought it up in the first place. But  
11 it's too late now.

12 I mean, I'm more than happy, Mr. Munn, to  
13 allow you to handle -- I feel pretty confident in  
14 saying that the whole purpose of the super Protective  
15 Order was not to handcuff any of the attorneys in  
16 their representation of their clients. So I don't  
17 have a problem granting you that variance.

18 As to everybody else in the room, you  
19 know, then I might start wondering what we need to do.  
20 But at this point we will just wait and see how it  
21 turns out. If anybody uses it, then I'll deal with it  
22 then.

23 But this is notice to people, if you are  
24 doing the confidential information, you have to pipe  
25 up because we are going to have to figure out what to



1 do and who can be here and who can't.

2 So with that being said -- more than  
3 enough, I'm sure -- anything further procedurally?

4 (No response.)

5 HEARING EXAMINER: Okay. Let me just say  
6 that since I've heard two phones go off since I asked  
7 you to turn your phones off, the next one I hear, all  
8 phones will be removed from the room.

9 Mr. Munn?

10 MR. MUNN: I would just like to note that  
11 my phone is off.

12 HEARING EXAMINER: Excellent. And mine's  
13 in my office.

14 MR. MUNN: My battery probably doesn't  
15 even work; so it doesn't matter.

16 I just wanted to ask Your Honor for a  
17 clarification relating to the Motion to Withdraw the  
18 E911 data.

19 HEARING EXAMINER: Yes.

20 MR. MUNN: You did mention that you would  
21 allow the -- really, it will be the witness,  
22 Mr. Badal, who has that in his November 16th  
23 testimony, to amend his testimony to have that not  
24 appear in the testimony.

25 I just need clarification around that so I

1 know how to conduct the Direct.

2 HEARING EXAMINER: Yes, sir. You are  
3 going to need to -- since it's in the record starting  
4 with the affidavit, I believe, of October 5th and then  
5 the subsequent November 16th testimony, all prior to  
6 the 12-27 Motion, I'm not removing it from the record.  
7 That was his offering in the affidavit and that was  
8 his testimony as of the 16th.

9 Pursuant to my reading of your Motion,  
10 Mr. Badal now wishes to change his testimony and he no  
11 longer wishes to present certain information that was  
12 contained in the affidavit in the testimony. He will  
13 be present here today and he can tell me what parts he  
14 wants to not put forth.

15 I mean, no witness is going to be  
16 obligated to testify here today if he's changed his  
17 mind or if he's amending his testimony.

18 But that testimony as offered in October  
19 5th and November 16th will remain in this record  
20 because it was filed testimony of your witnesses,  
21 whether it be Mr. Badal and/or Mr. Teitzel.

22 So we can -- as is usual, if you have any  
23 corrections, additions or deletions, you can say  
24 whatever you are going to say, if you are going to say  
25 yes, we no longer set forth Page 8 through Page 97.

1 But again, that testimony -- you are going to have to  
2 tell me what parts Mr. Badal or Mr. Teitzel don't want  
3 to go forward with here today.

4 MR. MUNN: Right.

5 HEARING EXAMINER: But again, sir, just  
6 for your clarification, they will stay in the record  
7 and I will allow inquiry to whoever has changed their  
8 testimony for other purposes.

9 If they are not specifically setting forth  
10 the testimony as being the position of the parties,  
11 since the testimony was in the record, I still think  
12 that the other parties will have the opportunity in  
13 their testimony which relates to the Motion to Strike  
14 theirs, but they can comment that the testimony has  
15 changed because it has.

16 MR. MUNN: Yes.

17 HEARING EXAMINER: So does that answer the  
18 question?

19 MR. MUNN: It does. And I have only one  
20 more inquiry that I just want to be clear on.

21 HEARING EXAMINER: Sure.

22 MR. MUNN: You mentioned the other  
23 parties and their testimony, since I believe  
24 Mr. Ripperger and possibly Ms. Roth as well, address  
25 some of that testimony that is the subject of the

1 Motion to Withdraw. I understand that's not being  
2 removed. I'm very clear on that.

3 But with respect to my witness, Mr. Badal,  
4 then if he is amending that with the corrections, my  
5 assumption here is that then there's not  
6 Cross-Examination for a day about testimony that is  
7 being amended by the witness.

8 I understand that Staff's witness and  
9 AT&T's witness still have their testimony in the  
10 record so that's still a part of the proceeding. But  
11 Cross-Examination is my question.

12 HEARING EXAMINER: Well, I think,  
13 Mr. Munn, that if your witness is changing or amending  
14 his testimony or their testimony here today, I think  
15 it is proper inquiry for the parties to ask, you know,  
16 why. So I think a certain limited inquiry into the  
17 change is appropriate.

18 But if there are going to be some extended  
19 Cross-Examination by the parties on testimony that  
20 they are no longer setting forth, I don't see that as  
21 appropriate. I mean, I don't know if that's the  
22 intent of the parties here. But we'll see where it  
23 goes. But that's not what I'm thinking.

24 MR. MUNN: Okay.

25 HEARING EXAMINER: I mean, again, the

1 record is the record. Do I think that in some type of  
2 legal argument that it might be appropriate for the  
3 parties to make their argument about testimony or  
4 amended testimony or whatever? Well, that's a  
5 separate issue.

6 But as far as Cross-Examination, at this  
7 point I don't really see the necessity to  
8 Cross-examine your witness ad nauseam on testimony  
9 that they don't want to proceed with.

10 MR. MUNN: Thank you for the  
11 clarification, Your Honor.

12 HEARING EXAMINER: Anything else with  
13 regard to that clarification.

14 Mr. Mittle?

15 MR. MITTLE: Not with regard to that  
16 question.

17 HEARING EXAMINER: All right.

18 MR. MITTLE: I had another question.  
19 Let's not -- so at the time that the witness was going  
20 to offer his testimony I may have raised an objection  
21 in the form of a Motion to Strike because what I  
22 noticed in the testimony of Mr. Ripperger, Mr. Badal,  
23 Mr. Teitzel, there's a lot of legal argument.

24 HEARING EXAMINER: Yes.

25 MR. MITTLE: I don't know if it's

1 appropriate by your entree to discuss that now or I  
2 was -- it tends to be the conduct here that once the  
3 witness offers his testimony to, say, Page 2 through  
4 the end, let's strike, but I'm not sure how you would  
5 like to deal with that.

6 HEARING EXAMINER: Well, is this a blanket  
7 objection to any testimony by any party as to some  
8 type of legal argument you think they might be making?

9 MR. MITTLE: No. I can be specific as to  
10 page and line number when that time comes.

11 HEARING EXAMINER: All right.

12 MR. MITTLE: But to the extent that I am  
13 going to be raising a series of legal arguments, if  
14 you want to look at it as a broad one, in other  
15 hearings you say if the witness can answer the witness  
16 can answer and you will take it for what it's worth,  
17 then we don't need to waste time going through  
18 line-by-line. We can deal with it as a standing  
19 objection.

20 HEARING EXAMINER: I can do that,  
21 Mr. Mittle. I appreciate you bringing it up now. I  
22 would like most probably for you to make the first one  
23 and then I will note a continuing objection.

24 But to save time, I think you are pretty  
25 well aware of the general policy of the Commission in

1 the fact that we are not technically bound, although  
2 we have great respect for the Rules of Civil Procedure  
3 and the Rules of Evidence of the District Court, that  
4 we are an administrative process and that we are in  
5 the unique position of hearing from individuals who  
6 may or may not be attorneys but are generally persons  
7 who have a knowledge and/or expertise in the subject  
8 matter that we deal with.

9 Based upon that expertise and knowledge of  
10 the subject matter, and the regulatory arena being the  
11 unique arena that it is, that at times the Commission  
12 has and does allow these expert witnesses to comment  
13 on the legal ramifications of the subject matter.

14 So thanks for bringing that up,  
15 Mr. Mittle. I'm sure you will have your objection and  
16 we will deal with it at that particular point in time.

17 Anything further of a procedural nature?

18 (No response.)

19 HEARING EXAMINER: Hearing nothing, then,  
20 from my reading of the Pleadings and the obligation  
21 that the parties have, specifically Qwest, in this  
22 particular matter, my understanding is that Qwest has  
23 the burden; therefore, Qwest will present its  
24 witnesses first.

25 AT&T, the Attorney General and then Staff

1 will have, in that order, the opportunity to  
2 Cross-examine the witness. I will ask the witness any  
3 questions I think might be helpful to present the  
4 Commission with the most complete record in this  
5 matter. Then we will allow a redirect and recross of  
6 the witness. Then AT&T will have the opportunity to  
7 present its witness and we will close with the Staff's  
8 witness.

9 Any question on the procedure?

10 (No response.)

11 HEARING EXAMINER: Hearing none, Mr. Munn?

12 MS. REILLY: Sorry. I was a little slow  
13 getting up, but I presume that Qwest intends to  
14 present its witnesses on both their Direct and their  
15 Rebuttal together or we should discuss whether that's  
16 the case or whether they want to bring the witnesses  
17 back for Rebuttal.

18 HEARING EXAMINER: Mr. Munn, I'm sure you  
19 have been advised that generally, unless there is some  
20 type of specific reason, we generally do have the  
21 witness stand if at all possible.

22 Is that your intention?

23 MR. MUNN: Yes, it is.

24 HEARING EXAMINER: All right. Very good.  
25 No objection, then, to our current procedure?



1 (No response.)

2 HEARING EXAMINER: All right, then,  
3 Mr. Munn or Mr. Montgomery or Mr. Olson, whoever is  
4 presenting this witness -- Mr. Munn, are you  
5 presenting the whole case here?

6 MR. MUNN: I will be presenting the whole  
7 case with any specific comments from Mr. Olson if that  
8 need should arise. But I plan to be doing all the  
9 questioning.

10 HEARING EXAMINER: All right. No  
11 tag-teaming there?

12 MR. MUNN: Correct.

13 HEARING EXAMINER: All right. If I need  
14 to know, excellent.

15 Let me also say -- I think he was going to  
16 talk to you, but let me just put this on the record.  
17 The other request, as we were recessing, was from  
18 Mr. Mowery as local Counsel for AT&T. Mr. Mowery had  
19 other matters to attend to this afternoon and wondered  
20 if he could be excused.

21 Is there any objection to Mr. Mowery not  
22 appearing this afternoon?

23 MS. REILLY: (Inaudible).

24 HEARING EXAMINER: I know, Ms. Reilly,  
25 that I have been burned in the past, but I did not ask

1 Mr. Mowery why -- he told me he had other matters to  
2 attend to.

3 MS. REILLY: Jealously, no objection.

4 HEARING EXAMINER: All right. Mr. Munn,  
5 if you would like to proceed, please.

6 MR. MUNN: Thank you, Your Honor. Qwest  
7 calls Mr. John Badal.

8  
9 JOHN BADAL

10 The witness herein, after having been  
11 first duly sworn upon his oath, was  
12 examined and testified as follows:

13  
14 DIRECT EXAMINATION

15  
16 BY MR. MUNN:

17 Q. Would you please state your name, sir?

18 A. My name is John Badal.

19 Q. Mr. Badal, who do you work for?

20 A. Qwest Corporation.

21 Q. And what is your job title with Qwest?

22 A. State Vice President for New Mexico  
23 operations.

24 Q. And are you the same John Badal who filed an  
25 affidavit on October 1st, 2001, Direct Testimony on

1 November 16th, 2001, and Rebuttal Testimony on January  
2 11th, 2002, in this matter?

3 A. I am.

4 (Whereupon, a document was marked  
5 QWEST EXHIBIT 1 for identification.)

6 (Whereupon, a brief discussion was  
7 held off the record.)

8 BY MR. MUNN:

9 Q. Mr. Badal, you have before you what's been  
10 marked for identification as Qwest Track A Exhibit 1.  
11 I will ask you if that is a copy of your November  
12 16th, 2001, Direct Testimony with exhibits?

13 A. It is.

14 Q. Just for clarity, that Exhibit 1 contains as  
15 an exhibit to that Direct Testimony your October 5th,  
16 2001, affidavit; correct?

17 A. Let me check. (Witness refers to document.)  
18 It does.

19 (Whereupon, a document was marked  
20 QWEST EXHIBIT 2 for identification.)

21 BY MR. MUNN:

22 Q. And Mr. Badal, you have also before you  
23 what's been marked for identification as Exhibit  
24 No. 2.

25 Is that your January 11th, 2002, Rebuttal

1 Testimony with exhibits?

2 A. It is.

3 Q. And Mr. Badal, do you have any corrections to  
4 make to either Exhibit 1 or Exhibit 2?

5 A. Yes, I have two corrections to make to  
6 Exhibit 1. Do you want me to go over those now?

7 Q. If you could, please discuss what those are.

8 A. Okay. Found in my affidavit of January the  
9 -- excuse me -- of October the 5th, in Paragraph 3 --

10 Q. Just for clarity on the record, this is  
11 Exhibit JWB-1 to Exhibit 1?

12 A. On the 4th line from the top of the page,  
13 Page 3, this is in Paragraph 3, I would like to add  
14 the words 'and wireless carriers' after the word  
15 'CLECs', the first word in the sentence on the fourth  
16 line.

17 MR. MUNN: Your Honor -- excuse me,  
18 Mr. Badal. Is it appropriate, then, for Mr. Badal to  
19 make the change on the Court's copy and then initial  
20 that change?

21 HEARING EXAMINER: Yes, absolutely. What  
22 I'd like for you to do is mark out or add it, yes,  
23 that's a good idea, initial it.

24 MR. MUNN: That's fine.

25 THE WITNESS: And the second change --

1 MS. REILLY: I'm sorry. For  
2 clarification, there may be some -- because these were  
3 served by e-mail, I think there are some pagination  
4 differences. The word CLEC appears several times in  
5 Paragraph 3 and I want to make sure I get it in the  
6 right place.

7 THE WITNESS: Okay. If you look at  
8 Paragraph 3 and go to the very end of Paragraph 3, at  
9 the very end of Paragraph 3 about two sentences up  
10 from the bottom you will see 'the decline in Qwest  
11 residential access line base indicates that CLECs...'  
12 Then I would add 'and wireless carriers are providing  
13 service to residential customers'.

14 MS. REILLY: Thank you.

15 THE WITNESS: Okay. And the second change  
16 that I propose is to strike all of Paragraph 4 in that  
17 same affidavit, which goes to the point that Counsel  
18 was making earlier that amending testimony with  
19 respect to the Intrado report.

20 HEARING EXAMINER: So you wanted to delete  
21 all of 4?

22 THE WITNESS: All of 4.

23 HEARING EXAMINER: And that begins on Page  
24 3 and ends on Page 5 or 4?

25 THE WITNESS: Page 4, yes, Your Honor.

1 HEARING EXAMINER: All right.

2 BY MR. MUNN:

3 Q. Mr. Badal, do you have any other corrections  
4 to either Exhibit 1 or Exhibit 2?

5 A. No, I don't.

6 Q. And if I asked you the same questions that  
7 you were asked in your prefiled testimony, would your  
8 answers be the same here today?

9 A. Yes, they would.

10 HEARING EXAMINER: We don't have any  
11 changes whatsoever in your November or your Rebuttal  
12 Testimony, then?

13 MR. MUNN: Your Honor, I know there's  
14 none with respect to the topics of the Motion to  
15 Withdraw. We have no reference in there.

16 HEARING EXAMINER: Okay.

17 MR. MUNN: I don't think there's any,  
18 like, typos. If there are we have just missed them.

19 HEARING EXAMINER: I wanted to make sure  
20 there were --

21 THE WITNESS: I have none proposed, Your  
22 Honor.

23 MR. MUNN: Your Honor, Qwest tenders  
24 Exhibit 1 and Exhibit 2 into evidence. Exhibit 1  
25 being the November 16th Direct Testimony of Mr. Badal

1 and Exhibit 2 being the January 11th Rebuttal  
2 Testimony of Mr. Badal.

3 HEARING EXAMINER: Are there any  
4 objections to the introduction of what has been  
5 identified and corrected as Qwest Exhibit 1, that  
6 being the Direct Testimony of Mr. Badal with the  
7 specific instruction that it does contain the October  
8 5th affidavit?

9 MS. REILLY: Ms. Hurst, subject to the  
10 clarification that you provided earlier on the  
11 testimony that Qwest is seeking to strike and the uses  
12 to which it can be put, we have no objection.

13 HEARING EXAMINER: I don't know if I  
14 understood what that meant, Ms. Reilly.

15 MS. REILLY: Maybe I didn't either. What  
16 I mean is Mr. Badal offered as a correction that he  
17 was striking Paragraph 4 and I believe that was the  
18 subject of the Motion to Strike and the discussions we  
19 had earlier. And I believe your clarification  
20 indicated that that material could be used for certain  
21 purposes.

22 So by agreeing to it in its amended form  
23 with that material stricken, we just want to retain  
24 the right to use it for the purposes that you  
25 indicated it could be used for. So by not objecting

1 to its admittance as it's been amended we just wanted  
2 to clarify that.

3 HEARING EXAMINER: Right. You are not  
4 waiving anything to be able to use the testimony  
5 that's already in the record. You threw me off there  
6 with the word stricken. I'm allowing the witness here  
7 today to say no, that's not my testimony, as of the  
8 filing of the Motion, which I elaborated to.

9 So, Mr. Badal is not going to have to  
10 testify to things he doesn't want to testify to any  
11 more, but again, it's not stricken from the record and  
12 I just wanted to clarify that.

13 Mr. Witt, any objection to what's been  
14 offered and corrected by the witness as Exhibit 1?

15 MR. WITT: No objection, Your Honor.

16 HEARING EXAMINER: Mr. Mittle, any  
17 objection to what's been identified as Exhibit 1?

18 MR. MITTLE: Not to Exhibit 1.

19 HEARING EXAMINER: All right. I just  
20 wanted to make sure, Mr. Badal, since my -- my copy  
21 had your affidavit somewhere else. So I want to make  
22 sure I've got all your exhibits.

23 Can you tell me how many exhibits you had  
24 with your Direct Testimony of November 16th?

25 Mr. Munn, do you know?



1 MR. MUNN: Yes, Your Honor. There are  
2 three exhibits. JWB-1 is Mr. Badal's October 5th  
3 affidavit along with those exhibits to that affidavit.  
4 Those are all Exhibit JWB-1.

5 HEARING EXAMINER: All right.

6 MR. MUNN: And JWB-2 is a Cricket direct  
7 mailer. It's a two-page document. And the third and  
8 last exhibit is JWB-3, which consists of three  
9 affidavits of Albuquerque or Santa Fe residents who  
10 replaced their Qwest or wire line service with Qwest  
11 or Cricket service.

12 HEARING EXAMINER: How many exhibits were  
13 there to the affidavit?

14 MR. MUNN: I believe there were ten  
15 exhibits, A through J.

16 HEARING EXAMINER: Do any of them relate  
17 to certain material?

18 MR. MUNN: No, they don't, Your Honor.

19 HEARING EXAMINER: Or the amended  
20 material?

21 MR. MUNN: No, they don't.

22 We just did a very quick scrub here. I  
23 don't see any of these that would relate to that  
24 material.

25 THE WITNESS: No.

1 HEARING EXAMINER: Okay. Mr. Badal, my  
2 understanding of some of your exhibits is that they  
3 include, and correct me if I'm wrong, if this is --  
4 wait. I'll take your request to introduce, as  
5 corrected by your witness, Exhibit 1, Mr. Munn.

6 Is there any objection to what's been  
7 identified by the Qwest witness as Qwest Exhibit 2,  
8 that being the Rebuttal Testimony of Mr. Badal?

9 Mr. Witt?

10 MR. WITT: No objection, Your Honor.

11 HEARING EXAMINER: Ms. Reilly?

12 MS. REILLY: No objection.

13 HEARING EXAMINER: Mr. Mittle?

14 MR. MITTLE: Yes, ma'am. It's just part  
15 of a continuation of the Motion to Strike because of  
16 the legal conclusions drawn.

17 I believe I understand what you said. I  
18 was just going to point out and request whether you  
19 need examples, if I should go through them here now or  
20 just make it a continuing objection.

21 HEARING EXAMINER: So your objection,  
22 Mr. Mittle, is to Mr. Badal's Rebuttal Testimony  
23 because why?

24 MR. MITTLE: Because he states legal  
25 conclusions. For example, on Page 5, Line 16 -- at

1 Line 14 the question was asked whether Mr. Ripperger  
2 and Ms. Roth accurately described the applicable legal  
3 standards in this proceeding. And the answer is:

4 No. Both witnesses have misstated the  
5 relevant legal standards governing this  
6 proceeding. It is therefore necessary to  
7 rebut their legal analysis here.

8 So to the extent that that, then, starts a  
9 question and answer in the testimony that goes to what  
10 is the relevant legal standard I would object that  
11 that calls for a legal conclusion which is outside the  
12 scope of this witness' expertise.

13 HEARING EXAMINER: All right, Mr. Mittle.

14 MR. MITTLE: And a continuing objection on  
15 other issues like that.

16 HEARING EXAMINER: Okay. Again, I think,  
17 as I have previously said, the unique arena that we  
18 are dealing with in the subject matter and the  
19 Commission's past pattern and practice have allowed  
20 witnesses to comment on the regulatory arena.  
21 Therefore, I'm going to deny your objection.

22 But as is noted in the record, you may  
23 have your continuing objection unless there's an  
24 objection to the continuing objection. All right.

25 Hearing none, then -- all right. Now we

1 can get to what I have questions about.

2 Mr. Badal, perhaps you can help me. I  
3 have some questions about your exhibits.

4 THE WITNESS: Fine.

5 HEARING EXAMINER: For example, I have a  
6 question about, I believe you have an exhibit that's a  
7 newspaper article?

8 THE WITNESS: Yes, Your Honor.

9 HEARING EXAMINER: And to what -- to which  
10 part of your testimony -- help me out. Is that  
11 attached as an exhibit to your Direct Testimony or  
12 your Rebuttal Testimony?

13 THE WITNESS: Actually, I think it's to  
14 both. I believe I speak to Cricket's operation and  
15 their marketing strategies in both.

16 MR. MUNN: Your Honor, attached to the  
17 Rebuttal Testimony of Mr. Badal we have some data  
18 request responses as Attachment 1.

19 Then we have a press release from  
20 Cricket's own website as Attachment 2.

21 So the actual newspaper articles or  
22 references -- let me find that. There is Attachment E  
23 to Mr. Badal's October 5th affidavit. That's in the  
24 Albuquerque Journal, February 22, 2001 article. That  
25 would be one example. Also Attachment F to that same

1 affidavit is an Albuquerque Journal newspaper article  
2 of September 10th, 2001, directly addressing New  
3 Mexico Cricket issues and representations.

4 HEARING EXAMINER: All right. What about  
5 the transcription of the commercials?

6 THE WITNESS: I think that would be the  
7 same case. It was first raised in my affidavit.

8 HEARING EXAMINER: Okay.

9 THE WITNESS: And was an attachment to  
10 the affidavit.

11 MR. MUNN: That is Attachment J. That's  
12 correct; it's Attachment J to Mr. Badal's October 5th  
13 affidavit, which is JWB-1.

14 HEARING EXAMINER: Okay.

15 MR. MUNN: To the November 16th Direct  
16 Testimony.

17 HEARING EXAMINER: All right. Mr. Badal,  
18 are you familiar with what hearsay is?

19 THE WITNESS: I believe so, yes, Your  
20 Honor.

21 HEARING EXAMINER: As being an  
22 out-of-court statement made for the matter of the  
23 truths asserted here today and pursuant to that.  
24 That's one of the questions I have.

25 Generally, the Commission, again, since we

1 are not bound to a strict interpretation of the  
2 District Court rules, generally allows hearsay for  
3 whatever value it might have.

4 What I would like to know, sir, is, for  
5 example, this newspaper article, do you believe that  
6 the newspaper article that you've attached as an  
7 exhibit to your testimony, do you think that the  
8 Commission should use that newspaper article to prove  
9 your case for you?

10 THE WITNESS: Your Honor, I do believe  
11 that. The newspaper article serves, I think, a  
12 relevant purpose to our arguments here in that it  
13 actually validates what Cricket's managers state about  
14 their marketing strategies.

15 It is our intent to demonstrate to the  
16 Commission that Cricket offers a service that serves  
17 as a replacement for wire-line service. And we are  
18 using the article and then the later affidavits as  
19 well as examples or evidence that the management of  
20 Cricket is publicly reported reinforcing what Cricket  
21 has stated on the record, what it is corroborated as  
22 doing at the FCC as stated by the FCC. And then with  
23 respect to the affidavits, we even have --

24 HEARING EXAMINER: Well, we don't need to  
25 go to that yet.

1 THE WITNESS: Okay.

2 HEARING EXAMINER: I'm wondering, for  
3 example, if there was a hearing -- well, even in this  
4 hearing or any hearing that Qwest is in, if somebody  
5 brought in a newspaper article about Qwest, do you  
6 think necessarily that the Commission should rely on  
7 some newspaper article to make its determination on  
8 what the newspaper might say about Qwest?

9 THE WITNESS: Your Honor, I believe that  
10 if someone in a Commission proceeding said that  
11 Qwest's position is X and Qwest were to deny that and  
12 then that person pulled out a newspaper article  
13 evidencing a statement by a Qwest manager in the  
14 newspaper reinforcing or validating what that  
15 participant in the proceeding said, I think then the  
16 newspaper could be used as evidence.

17 HEARING EXAMINER: But what if it said  
18 something horrific about Qwest? Do you think the  
19 Commission should rely on it then?

20 THE WITNESS: If the statement was true,  
21 I think it should be considered.

22 HEARING EXAMINER: My point is, Mr. Badal,  
23 do you believe everything you read in the newspaper?

24 THE WITNESS: Your Honor, no, I don't.  
25 No, I don't. But I also believe in easy math. You

1 know, 1 and 1 equals 2. I also believe in easy  
2 questions where a reporter would ask an individual,  
3 are you doing this or what are you doing? And the  
4 manager says, clearly, we are going after wire-line  
5 customers. I take that at face value. I don't know  
6 how that can be taken out of context.

7 HEARING EXAMINER: Well, Mr. Badal, do  
8 you think that something that's written in the  
9 newspaper or article, that the Commission should give  
10 it the same weight as, for example, your testimony  
11 being here today?

12 THE WITNESS: Your Honor, that's a good  
13 question. Probably not. Probably not. But I think  
14 it should be given some weight.

15 HEARING EXAMINER: What about the press  
16 release, Mr. Badal? My understanding of press  
17 releases is that they are written by the company. I  
18 believe that the one that you have attached is  
19 actually from the Cricket website.

20 Is that correct?

21 THE WITNESS: Yes, Your Honor.

22 HEARING EXAMINER: Do you think it's in  
23 Cricket's best interest in that press statement to put  
24 things in a positive light?

25 THE WITNESS: Yes, I do, Your Honor.



1 Yes, I do. But it's interesting that Cricket's  
2 website is different from other wireless carriers'  
3 websites. You can check them out.

4 Might I say, Your Honor, too, I've been in  
5 the telecommunications business for over 22 years. I  
6 think I have as good a feel of the telecommunications  
7 industry as anyone in the state. And I was considered  
8 when I did work in Arizona, Utah and New Mexico, I was  
9 considered the top, if not one of the top,  
10 telecommunications consultants.

11 I know the industry. And I am very  
12 familiar with Cricket's style of marketing and the  
13 product it offers as differentiated from other  
14 wireless companies. You won't see other wireless  
15 companies touting, as Cricket does, that it is a full  
16 replacement for wire-line services.

17 I think for the purposes of our  
18 discussions today, for the purpose of our 271 filings,  
19 that it's highly relevant.

20 HEARING EXAMINER: All right.

21 MR. MUNN: Your Honor, may I offer  
22 something your question had raised about the newspaper  
23 articles?

24 HEARING EXAMINER: Sure.

25 MR. MUNN: I think one thing, when you

1 are looking at newspaper articles and you have a  
2 direct quote, for example, from Mr. Clark, I think  
3 that those direct quotes sometimes can be different  
4 from a newspaper writer's just own extrapolations or  
5 opinions. I mean, either he accurately quoted this  
6 person or he didn't. But the key is that the article  
7 itself --

8 MS. REILLY: Excuse me. I have an  
9 objection. Excuse me. May I have the mike?

10 HEARING EXAMINER: I don't want to -- I  
11 appreciate it, Mr. Munn. I realize that you are just  
12 trying to provide a clarification to me. You can make  
13 your legal argument and the parties can make your  
14 legal arguments as to the importance and the weight  
15 that should be given on the evidence.

16 I just have specific questions and I  
17 wanted to hear from Mr. Badal whether or not he was  
18 offering and in what context. I suppose that can be  
19 fleshed out in questioning exactly what he's doing.  
20 I'm trying to figure out -- I want to hear from him  
21 because they are his exhibits. I wanted to see what  
22 purpose that he intended them in his testimonial  
23 package.

24 I am going to -- well, I do find -- and I  
25 don't think it's any surprise to anybody -- I do find

1 that, as we know, that the exhibits are hearsay, but  
2 as I explained to Mr. Badal, and I will explain to  
3 everyone in the hearing again, being the forum that we  
4 are, the Commission has in the past allowed hearsay  
5 into its record for what value, what probative value,  
6 if any, and will give it the appropriate weight, if  
7 any. Based upon that ruling and a finding that those  
8 exhibits comport with that and without objection, I  
9 will introduce Exhibit 1 into today's record as  
10 corrected by Mr. Badal.

11 And with noting and having denied  
12 Mr. Mittle's objection to 2, Exhibit 2, I will  
13 introduce, again subject to the same clarification on  
14 my reading of the exhibits, will introduce Exhibit 2  
15 into the record.

16 (Whereupon, QWEST EXHIBITS 1 and 2 were  
17 admitted into evidence, copies of  
18 which may be found under separate cover.)

19 HEARING EXAMINER: Ms. Reilly, do you have  
20 an objection?

21 MS. REILLY: Thank you. I think you've  
22 taken care of it.

23 HEARING EXAMINER: All right. With that  
24 being said, and just making sure that we give the  
25 Court Reporter the appropriate exhibits, Mr. Munn,

1 anything further?

2 MR. MUNN: Nothing further. Mr. Badal is  
3 subject to Cross-Examination.

4 HEARING EXAMINER: Excellent. Thank you  
5 sir.

6 Mr. Witt?

7 MR. WITT: Thank you, Your Honor.

8

9 CROSS-EXAMINATION

10 BY MR. WITT:

11 Q. John, good afternoon.

12 A. Gary, hello.

13 Q. John, let me just start out by asking, would  
14 you please give us a definition from your standpoint  
15 of the phrase, de minimis?

16 A. De minimis speaks to a minimum quantity.

17 Q. So it would be a quantity?

18 A. Yes.

19 Q. Okay. Without asking you to set a quantity,  
20 would you agree with me that you have some -- in order  
21 to determine what is de minimus, you should be looking  
22 at how much of a particular thing you have?

23 A. Well, Mr. Witt, I'm not an attorney and I  
24 don't know all the implications of the term de  
25 minimis, the value of the term in law.

1 I can speak to the term de minimis as it  
2 applies to what we are doing here. I know the FCC has  
3 found in a number of its Orders what it considers  
4 non-de minimis and de minimis. I'm relying on the  
5 FCC's judgment as to what is de minimis.

6 Our filings here or our intended filing to  
7 the FCC, the 271 filing to the FCC is going to be  
8 based pretty much on the FCC's record with respect to  
9 its determinations in the SBC and Verizon cases and  
10 others.

11 Q. Fair enough. So in other words, what you are  
12 saying is irrespective of your definition of  
13 de minimis, the real definition that's important is  
14 the one from the FCC.

15 Am I hearing you correctly?

16 A. Quite right.

17 Q. Okay. On Page 2 -- well, I hope that my  
18 pagination is correct.

19 A. Okay.

20 Q. But I'm referring to your affidavit which is  
21 attached to your Direct Testimony, Page 2. About the  
22 middle of my page the sentence begins:

23 It is noteworthy that Qwest's residential  
24 access line base has decreased from  
25 607,907 in December of 2000 as reflected

1 in the Direct Testimony of Mr. David L.  
2 Teitzel, filed March 30th, 2001, to  
3 604,889 as of July 31st.

4 Do you find where I'm speaking?

5 A. Yes, I have the reference here.

6 Q. Okay. Do you have any more recent number  
7 than those two figures? In other words, these are  
8 both from December of 2000 and July 31st, 2001,  
9 respectively.

10 A. Yes. One of my employees just yesterday told  
11 me as he was reading off a report from end of year,  
12 that this number is the actual count now as of the end  
13 of the year. It's around 600,000 or below.

14 Q. Which is it, is it below 600,000?

15 A. He told me that the numbers have dropped down  
16 another four or five thousand.

17 Q. Okay. So for purposes of these proceedings,  
18 could we use a figure of 600,000?

19 A. That would be fine.

20 Q. Okay. I'll ask this of Mr. Teitzel as well,  
21 but I want to make sure that I don't lose anything by  
22 not asking you.

23 Are you familiar with Mr. Teitzel's  
24 testimony to the effect that at the present time there  
25 are 1,700 resold residential access lines in Qwest's

1 service territory in the State of New Mexico?

2 A. I've read that, yes.

3 Q. I'll ask whether you are familiar with any  
4 updated figures on that 1,700 figure?

5 A. The last figure I saw I think was 1,829, I  
6 believe.

7 Q. Okay.

8 A. I think that was from Mr. Teitzel's Rebuttal  
9 or one of his documents.

10 Q. Okay. But in any event, it's less than  
11 2,000?

12 A. Yes.

13 Q. If we were to say 2,000, it would be  
14 generous?

15 A. If you want to be generous, yes.

16 Q. It's my nature.

17 A. Okay.

18 Q. As a percentage, I mean, you mentioned  
19 earlier that you like simple mathematics, simple  
20 arithmetic. I share that passion with you.

21 If you assumed the number 2,000 for the  
22 resold access lines and you also assume a base of  
23 600,000, then my calculation, and perhaps you can  
24 correct me on this, indicates that less than .3  
25 percent, something a little less than .3 percent of

1 the residential access lines in the state are being  
2 resold.

3 Would you concur?

4 A. Yes. I also know that -- I understand that  
5 AT&T has opposed the 271 petitions for the other  
6 states that have already received 271 approval, and  
7 some of that opposition is based on, again, market  
8 share. The FCC has opined numerous times that market  
9 share is really not much of a consideration in  
10 granting a 271 approval. It's more of a matter -- or  
11 the major consideration is whether or not the local  
12 market, the local network is effectively open to  
13 competitors in order for them to compete.

14 So I'm not stating and I'm not prepared to  
15 state at all whether that number is sufficient for  
16 CLECs or not. But I think it would be satisfactory to  
17 the FCC.

18 Q. What do you base that on?

19 A. I base that on my readings of the Commission  
20 Orders in approving some of SBC and Verizon's,  
21 petitions, 271 petitions.

22 Q. Is there a specific citation that you have  
23 that says that something less than .3 percent resale  
24 is, by the FCC's definition, greater than de minimis?

25 A. I don't recall reading anything specifying a



1 number other than the FCC's statements contradicting  
2 opposition to Verizon or SBC's competition. Their  
3 numbers were sufficient.

4 Q. We are really not talking about their  
5 numbers. We are talking about Qwest's numbers.

6 A. Yes, indeed. But one of the things that is  
7 driving my interests in having a 271 petition  
8 successfully moved through New Mexico is that New  
9 Mexico be held to the same standards that the other  
10 states have already received their 271 approval and  
11 those other states within the region who are seeking  
12 approval be held to, and no more.

13 Q. That's understandable. Thank you. Thank  
14 you, John.

15 A. You're welcome.

16 Q. At the bottom of Page 7 of this same  
17 affidavit and the top of Page 8, let me refer you to a  
18 sentence that begins -- in Paragraph 9. It's the  
19 third sentence of that paragraph, it looks like. I  
20 quote:

21 One thing we are noticing is over 7  
22 percent of our customers are cutting their  
23 home phone services.

24 That is a quote. I will represent to you  
25 that that's a quote from John Clark out of a newspaper

1 article that was mentioned earlier in your  
2 conversation with the Hearing Examiner.

3 Do you find where I am reading?

4 A. Yes, I find that.

5 Q. Let me focus on the phrase 'are cutting their  
6 home phone services'.

7 What does that mean?

8 A. In my mind -- because he doesn't define what  
9 cutting means. But in my mind, that means either not  
10 ordering another telephone line in favor of a wireless  
11 line or actually terminating service, wire-line  
12 service. It would be Qwest's service, by and large,  
13 since Cricket doesn't operate in Santa Fe and  
14 Albuquerque, thus terminating a Qwest line.

15 Q. But Mr. Clark is not here to explain that.

16 Am I correct?

17 A. Unfortunately, not.

18 Q. Okay. Thank you. Moving now to your Track A  
19 Rebuttal Testimony, John, if I could refer you to page  
20 -- and I hope that my pagination is correct. If it's  
21 not, please let me know.

22 A. All right.

23 Q. Page 16, beginning at Line 1. The sentence  
24 that I'm referring to begins -- it's the first  
25 complete sentence of Line 1 on Page 16. It says:

1           While it is true that the 7 percent  
2           estimate is not specific to New Mexico,  
3           neither Mr. Ripperger nor Ms. Roth have  
4           offered any evidence that the Cricket  
5           customers in New Mexico market are  
6           significantly different from the Cricket  
7           customers in other parts of the country.

8           Do you find where I'm reading?

9           A.    Yes, I do.

10          Q.    And have I read that correctly?

11          A.    Yes, you have.

12          Q.    Okay. You indicate there that neither  
13          Mr. Ripperger nor Ms. Roth have offered any evidence  
14          that the New Mexico market is significantly different  
15          than the Cricket market in other parts of the country.

16                But my question to you is, has Qwest  
17          offered anything, any evidence to show that, in fact,  
18          Cricket customers in New Mexico market are  
19          significantly the same as Cricket customers in other  
20          parts of the country?

21          A.    No, not really. But I would believe that  
22          since Cricket has the same marketing strategies from  
23          state to state in the number of states it operates in,  
24          that it would seek out some commonalities in its -- in  
25          a potential customer base here, as it does in those

1 other states. It's my opinion that he's found those  
2 commonalities.

3 MR. WITT: Your Honor, thank you. I have  
4 no further questions. John, thank you very much.

5 HEARING EXAMINER: Thank you, Mr. Witt.

6 Mr. Mittle do you have Cross-examination?

7 MR. MITTLE: Yes.

8 HEARING EXAMINER: While Mr. Mittle is  
9 getting ready we'll take a short recess.

10 (Whereupon, a brief recess was  
11 taken.)

12 HEARING EXAMINER: All right. We are back  
13 from our recess. Mr. Mittle, you have  
14 Cross-Examination of the witness.

15 MR. MITTLE: Thank you, ma'am.

16  
17 CROSS-EXAMINATION

18 BY MR. MITTLE:

19 Q. Mr. Badal, good afternoon.

20 A. Good afternoon.

21 Q. I would like to turn your attention to your  
22 affidavit, Exhibit JWB-1?

23 A. Okay.

24 Q. Now, we can start at Page 1. In Paragraph 2  
25 you state that the information you were submitting in

1 your affidavit was not available at the time of the  
2 Pleadings.

3 Do you see that?

4 A. (Witness refers to document.) It says Page  
5 1, Paragraph 2?

6 Q. Yes, sir.

7 A. (Witness refers to document.) Yes.

8 Q. What phase of the proceedings are you  
9 referring to?

10 A. Those were the multi-state workshop  
11 proceedings in Denver in June of 2001.

12 Q. So looking first at Attachment A, Attachment  
13 A is a list of local exchange tariffs in New Mexico.

14 Is that correct?

15 A. Yes.

16 Q. Was that schedule available before June of  
17 2001?

18 A. It might have been. I know that a number of  
19 CLECs had been applying in droves, been receiving  
20 their certification in the beginning of the year right  
21 up until about mid-year, and I'm assuming that a  
22 number of these would have already had their tariffs  
23 to provide local service in place by June.

24 But I'm not sure if others -- if all  
25 companies on this list would have had their tariffs in

1 place.

2 Q. And Attachment B is a Cricket advertisement.  
3 Was that available before June of 2001?

4 A. I don't know when, Mr. Mittle, the  
5 advertisement was released.

6 Q. Do you have any information about Attachment  
7 C, which is from the Cricket website?

8 A. Again, I can't speak to when the website was  
9 designed, drafted or updated.

10 Q. So Attachment D is an excerpt from the Leap  
11 wireless, SEC Form 10Q, dated May 15th, 2001?

12 A. Okay.

13 Q. Was that available before June of 2001?

14 A. Well, apparently. But Mr. Mittle, I think  
15 more to the point is that in the June proceedings on  
16 Track A and in Qwest's filings evidencing information  
17 to the ROC facilitator, we were relying on -- as the  
18 other Qwest states were -- relying much on what the  
19 FCC has stated as to the adequacy of 271 findings with  
20 respect to competition, which was a facility-based,  
21 the competition in the business sector of the market  
22 and on resale in the residential sector of the market.

23 It surprised us greatly when we saw the  
24 Antonuk report on Track A excepting or making an  
25 exception for New Mexico and Idaho. It boggled my

1 mind that a facilitator or anybody could find --  
2 again, because of what I know about the industry --  
3 that it boggled my mind that he could find that there  
4 was adequate competition in some of the very smaller  
5 states, Wyoming and South Dakota or North Dakota and  
6 not find there was adequacy and competition in New  
7 Mexico.

8           Thus, we -- and Mr. Antonuk, as a  
9 facilitator, stated that we didn't provide enough  
10 evidence for him to conclude that there was that  
11 adequate competition in New Mexico. Thus we filed  
12 this additional evidence.

13           Q.   Attachment E is an article from the  
14 Albuquerque Journal dated February 22nd, 2001. Was  
15 that article available before June of 2001?

16           A.   Obviously, yes, sir.

17           Q.   Attachment G is a report that was issued by  
18 the FCC July 17th, 2001. Was it available before June  
19 of 2001?

20           A.   July 17th?

21           Q.   Yes.

22           A.   (Witness refers to document.) No.

23           Q.   But in that report that you relied on, the  
24 FCC refers to what you have attached as Attachment H  
25 -- excuse me, Attachment I?

1 A. (Witness refers to document.)

2 Q. Which is an IDC setting?

3 A. Yes.

4 Q. Looking at Attachment I, it's dated December  
5 2000?

6 A. Yes, sir. But again, Mr. Mittle, it goes  
7 back to what I was saying earlier. We thought in the  
8 first evidence provided to the ROC and to the  
9 facilitator that the evidence, just as the evidence in  
10 all states provided on the same basis, would be  
11 sufficient. We didn't see the need to speak to the  
12 wireless competition as an alternative to wire-line.  
13 This was supplemental evidence, I think, that was  
14 needed because of Antonuk's recommendations.

15 Q. Turning to your Direct Testimony at Page 4 of  
16 5, please?

17 A. Page 4 and 5?

18 Q. 4 of 5 in your testimony.

19 A. (Witness refers to document.) Yes.

20 Q. I'm referring you to Line 9 in which you say  
21 you have had conversations with a number of consumers  
22 who have opted for Cricket PCS wireless.

23 A. Yes.

24 Q. Have you maintained any sort of record of  
25 conversations with any consumers?



1           A.     Mr. Mittle, no, I have not. But in my  
2     day-to-day business, I bump into not only Cricket  
3     employees, but other people, friends and family and  
4     then other acquaintances that are wireless users. I'm  
5     constantly talking telephone. I spend too much time  
6     talking telephone.

7                     The mother of my little brother -- I'm a  
8     member of the Big Brothers and Big Sisters program --  
9     the mother of my little brother is a Cricket user and  
10    she disconnected Qwest phone service. My stepdaughter  
11    is a Cricket customer and she replaced her primary  
12    line also.

13          Q.     Well, I appreciate all this, but are you  
14    aware of the FCC Order in the second Louisiana case?

15          A.     In part, Mr. Mittle, yes. I've read excerpts  
16    from the Order.

17          Q.     And you are aware that the FCC requested  
18    studies, statistical studies or other documentation to  
19    prove the substitute ability of PCS for wire-line?

20          A.     Mr. Mittle, I don't believe that's accurate.  
21    I think the FCC has stated that adequate studies or  
22    other bodies of evidence, including the company's  
23    market strategy, or evidence pointing to the company's  
24    market strategy would be sufficient.

25          Q.     Do you believe that your anecdotal evidence

1 would have helped make any sort of a study more  
2 relevant?

3 A. Would the anecdotal evidence --

4 Q. Of your Big Brother, Big Sister --

5 A. Would it have helped a study?

6 Q. Sure. Would that have been the basis for any  
7 sort of a statistical analysis?

8 A. Our evidence is not part of the study and it  
9 doesn't speak to the need for a study. The evidence  
10 goes to corroborate the statements made by Cricket  
11 managers and the comments made or statements made by  
12 the FCC as to the adequacy of evidence from a wireless  
13 company that its customers are replacing wire-line  
14 service with wireless service.

15 We are using the affidavits here and the  
16 advertisements and the website information here as  
17 corroboration of exactly what -- what Cricket wireless  
18 has been stating that it does.

19 In other words, Mr. Mittle, if I could  
20 add, if the FCC stated that evidence of market  
21 strategy was sufficient to make the case that wireless  
22 companies, Cricket Wireless, would replace wire-line  
23 service, we have this evidence that this is Cricket's  
24 market strategy and we have as evidence statements and  
25 affidavits from Cricket managers and people outside of

1 Cricket.

2 Q. And we will get there to see if that's what  
3 the FCC says, if you could just be a little patient  
4 with me.

5 A. Sure.

6 Q. Turning to your affidavit now at Page 2.

7 A. (Witness complies.)

8 Q. And continuing to Page 3.

9 A. I have it.

10 Q. At Pages 2 to 3 you discuss housing permits  
11 in Bernalillo and Dona Ana County?

12 A. Right.

13 Q. Housing starts in Albuquerque and Rio Rancho?

14 A. Right.

15 Q. And you seek to draw a comparison with  
16 Qwest's statewide number of residential access lines.

17 Is that correct?

18 A. Yes.

19 Q. Are you aware of any statistical analysis of  
20 the relationship between housing starts in Albuquerque  
21 and residential access lines?

22 A. No, Mr. Mittle, I'm not. What this is is, if  
23 I may expound on this -- or expand on this. This is a  
24 gut check for me.

25 Again, as I mentioned earlier, I've been

1 in this business for a number of years. I think I  
2 have a pretty good understanding where the industry is  
3 going, where the industry at large is going.

4 I do also have an understanding, I think,  
5 and a solid belief that wireless communications, for  
6 example, will replace in increasing fashion wire-line  
7 services for voice communications.

8 When I first saw the figures for our  
9 access line reductions in the state, which happened to  
10 be the first time in the last ten years, at least,  
11 that this company's experienced any reductions in  
12 access lines despite the ups and downs in the economy  
13 or the unemployment rates going up or down. I said  
14 something else is going on here. Because I sit on  
15 various boards, economic development and chamber  
16 boards, I hear of the growth in business  
17 opportunities, the growth in housing starts. And I  
18 think this is relevant there.

19 I'm enclosing this information as a  
20 relevant point of inquiry. I mean, isn't it strange  
21 that while housing starts are on the increase, which  
22 would lead one to believe that telephone service would  
23 be in higher demand, and that DSL and other services  
24 are being ordered in greater numbers, that we have an  
25 access line drop for a primary access line decrease in

1 the State of New Mexico. I was trying to make some  
2 conclusions about that.

3 Q. So the answer to the question was no?

4 A. To your earlier question, yes.

5 Q. I would now turn your attention to your  
6 affidavit at Page 5.

7 A. (Witness refers to document.)

8 Q. On the fifth line you give some examples of  
9 companies that you assert of targeting residential  
10 local exchange customers.

11 A. Yes, sir.

12 Q. NOW Communications is one. Do you know how  
13 many residential lines NOW Communications has in New  
14 Mexico?

15 A. No, I don't.

16 Q. MaxTel, do you know how many lines MaxTel  
17 has?

18 A. No I don't.

19 Q. You also use LTS New Mexico. Do you know how  
20 many residential access lines LTS New Mexico provides?

21 A. No, I don't, and frankly I don't want to  
22 know.

23 Q. And like wise, Genesis Communications, do you  
24 know how many they offer?

25 A. No, I don't. In that they have a tariff to

1 provide residential service, I would think they have  
2 an interest in providing residential service in the  
3 state.

4 Q. So on Page 6, it starts in the last sentence  
5 of Page 5, going on to Page 6 of your affidavit. You  
6 reference the second Louisiana Order.

7 A. Yes.

8 Q. Did you review the second Louisiana Order?

9 A. Mr. Mittle, I have read -- of the Orders  
10 issued by the FCC on its approvals or denials of 271  
11 entry, I have read a couple of them in their entirety  
12 and I have read excerpts from all of them.

13 So I can't tell you if I've read this one  
14 in its entirety or excerpts from.

15 Q. Did you write this affidavit?

16 A. I co-authored the affidavit.

17 Q. Who did you co-author it with?

18 A. With Mr. Munn.

19 Q. And did you write your Direct Testimony?

20 A. I co-authored that.

21 Q. With Mr. Munn also?

22 A. Yes, sir.

23 Q. And did you write your Rebuttal Testimony?

24 A. I co-authored that.

25 Q. With Mr. Munn also?

1           A.     Yes.

2           Q.     So when you spoke earlier of what the FCC  
3 ordered in their second Louisiana Order, did you  
4 review the specific paragraphs dealing with whether  
5 PCS is a viable alternative for Track A?

6           A.     Yes, I have.

7           Q.     Are you aware that the FCC rejected the  
8 evidence offered by BellSouth?

9           A.     I understand -- yes. I understand that the  
10 FCC rejected the evidence as insufficient even though  
11 it made some very clear statements in favor of  
12 broadband PCS or wireless service serving as a  
13 replacement and the sufficiency of broadband PCS  
14 service as a body of evidence as a replacement for  
15 wire-line service.

16          Q.     And in doing so, the FCC rejected a study,  
17 market research study prepared by M/A/R/C Research,  
18 the market study?

19          A.     I recall that, Mr. Mittle. I think they  
20 stated that the survey was not random enough and they  
21 had some other objections to it.

22          Q.     Would another objection be that the study was  
23 not based on statistical analysis?

24          A.     No, I don't recall exactly that, but you may  
25 be right.

1 Q. And the third objection was the study  
2 disguises the complementary nature of the services.

3 Do you recall that?

4 A. Mr. Mittle, I do. I also want to note, too,  
5 that the PCS service that was at question here was not  
6 Cricket at all. BellSouth was making a case that  
7 another company, another PCS service was a replacement  
8 for the BellSouth wire-line service. Cricket, I  
9 think, is in a game unto itself. It's in a category  
10 unto itself.

11 Q. Well, to the extent that Qwest is like  
12 BellSouth, wouldn't this other company be the same as  
13 Cricket?

14 A. Mr. Mittle, not at all. As I stated earlier,  
15 Cricket is a wireless company that does not, in my  
16 mind, compete directly with other wireless companies.  
17 In my mind, it is not in the category of a wireless  
18 competitor competing against its brethren wireless  
19 companies. Cricket's main targeted market is the  
20 ILECs' wire-line market.

21 Q. Have you offered any studies or objective  
22 analysis of the Cricket market in New Mexico?

23 A. No, we have not. Again, since the FCC would  
24 allow us to offer Cricket's market strategy in place  
25 of a survey, we think that our evidence here pointing



1 to and describing Cricket's market strategy would be  
2 sufficient for our FCC filing.

3 Q. In your testimony at paragraph -- well,  
4 sorry, in your affidavit, Paragraph 10.

5 A. Where is it?

6 Q. Page 8, Paragraph 10.

7 A. (Witness refers to document.) I have it.

8 Q. You refer to the Sixth Annual Report on the  
9 state of the competition in the wireless industry  
10 released July 17th, 2001, by the FCC.

11 A. Yes.

12 Q. Did you read the report?

13 A. I read portions of the report, sir.

14 Q. Do you know what the purpose of the report  
15 was?

16 A. It was to state the -- or report on the  
17 number of wireless companies in the country and the  
18 penetration rates.

19 Q. Did the report focus solely on PCSes or did  
20 it analyze all commercial mobile services?

21 A. Mr. Mittle, I believe they included mobile  
22 radio, too.

23 Q. On Page 32 of the report -- and actually,  
24 it's cited in your affidavit, Pages 8 and 9, the FCC  
25 referred to a Yankee Group study.

1 A. Yes.

2 Q. Did you determine if the Yankee report was  
3 based on a random sample?

4 A. No, I didn't.

5 Q. Did you determine if it was a statistically  
6 valid sample?

7 A. No, I didn't.

8 Q. Or whether it disguised the complementary  
9 basis of the services?

10 A. No, I don't remember doing that.

11 Q. In fact, didn't the Yankee study go to  
12 wireless phones and aren't wireless specifically  
13 excluded from Section 271 Track A?

14 A. I'm going to have to defer that. I think  
15 that the question touches on a legal matter and I  
16 think I will defer that to Mr. Munn.

17 Q. If I was going to say to you that the Yankee  
18 Group believes that the broad entrance of regional  
19 Bell companies into long-distance will not help lower  
20 rates, would you still be willing to rely on the  
21 Yankee Group as any sort of evidence?

22 A. I'm sorry. Could you repeat that?

23 Q. Would you agree with the Yankee Group that  
24 the broad entrance of the regional Bell companies into  
25 long-distance is not expected to help lower rates?

1           A.     I would disagree with that.

2           Q.     If you disagreed with it and the reliance  
3     that the FCC put on the Yankee Group report, would you  
4     question?

5           A.     I would think for the FCC's purpose of the  
6     Sixth Annual Report, I think the Yankee Group's other  
7     findings would be valid. I don't see the problem  
8     there.

9                     MR. MITTLE: May I approach the witness,  
10    please?

11                    HEARING EXAMINER: Yes, sir.

12                    MR. MITTLE: Mittle.

13                    (Whereupon, a document was marked  
14    AG EXHIBIT 1 for identification.)

15    BY MR. MITTLE:

16           Q.     Mr. Badal, I've handed you what I've marked  
17    as AG 1?

18           A.     Right.

19           Q.     That's an article from yesterday's Wall  
20    Street Journal.

21           A.     Yes.

22           Q.     In that article does the Yankee Group say  
23    that they do not expect long-distance rates to  
24    decrease despite regional Bell companies entry into  
25    the long-distance market?

1           A.     There is no direct quote from the Yankee  
2 Group where it says the entry of the Bell companies  
3 into long-distance is expected to lower rates. Again,  
4 a journalist has written that.

5           Q.     Was that quoted?

6           A.     No, that is not quoted.

7           Q.     Isn't the Yankee Group quoted?

8           A.     There's a quote from the Yankee Group below  
9 that that says they aren't going to be the lowest cost  
10 provider. But this above it is not in quotes.

11          Q.     It says, together in quotes, 'they aren't  
12 going to be the lowest cost, says Brian Adamik,  
13 president of Yankee Group'.

14          A.     All I'm saying is that the beginning of that  
15 sentence is not in quotes. The conclusion of someone  
16 and/or statement by someone. And the end of the  
17 sentence ends in a quote.

18                 And again, I don't agree with this at all,  
19 that we have seen with both Texas and the State of New  
20 York, the first two states that received 271 approval  
21 to enter the long-distance market, that long-distance  
22 rates were lowered, I think significantly, in both  
23 those states.

24                 That information comes from a study by an  
25 MIT economist that was conducted last year.

1 MR. MITTLE: I would now offer AG 1.

2 HEARING EXAMINER: Any objection to what's  
3 been identified as AG 1, a newspaper article from  
4 yesterday's Wall Street Journal?

5 MR. MUNN: No objection.

6 HEARING EXAMINER: Hearing no objection,  
7 with the same disclaimer -- not disclaimer but  
8 explanation that I gave about the previous exhibit  
9 newspaper article, I will admit AG 1.

10 (Whereupon, AG EXHIBIT 1 was  
11 admitted into evidence, a copy of  
12 which may be found under separate cover.)

13 MR. MITTLE: Thank you.

14 BY MR. MITTLE:

15 Q. Mr. Badal, if I could now turn your attention  
16 to your Rebuttal Testimony starting at Page 2.

17 A. (Witness refers to document.) Yes, sir.

18 Q. Lines 15 through 16.

19 A. (Witness refers to document.)

20 HEARING EXAMINER: Sir, what page?

21 MR. MITTLE: Page 2.

22 THE WITNESS: Yes.

23 BY MR. MITTLE:

24 Q. And you say the FCC has also expressly  
25 recognized that Cricket subscribers in particular are

1 using their wireless service as a substitute for  
2 wire-line service?

3 A. Yes, sir.

4 Q. Do you know where the FCC has recognized  
5 that?

6 A. I had that reference elsewhere. I believe it  
7 was in my affidavit. I think it was either in the  
8 Louisiana case or the Michigan case.

9 Q. Subject to check, would it be in the Sixth  
10 Report and not in the Louisiana or Michigan cases?

11 A. Subject to check, sure.

12 MR. MUNN: Mr. Mittle, when you say the  
13 Sixth report, are you referring to the Sixth Wireless  
14 Report, the July 17th, 2001 report?

15 MR. MITTLE: Yes, sir, whatever it's  
16 called.

17 MR. MUNN: Okay.

18 HEARING EXAMINER: I want that point  
19 verified.

20 MR. MITTLE: Because it goes to my next  
21 question.

22 HEARING EXAMINER: Let me just clarify. I  
23 think that's an important point. I'm not saying  
24 that's not where it's from, but I would want to know  
25 on the record from Qwest exactly the legal citation

1 for that premise.

2 MR. MUNN: Your Honor, I can provide that  
3 to you now if that would be appropriate.

4 HEARING EXAMINER: Okay.

5 MR. MUNN: It's the Sixth Wireless Report  
6 from the FCC, dated July 17th, 2001, at Page 33 where  
7 the FCC says:

8 A few wireless carriers have begun  
9 offering service plans designed to compete  
10 directly with wire-line local telephone  
11 service.

12 And in the example that they give, the  
13 very next sentence is:

14 For example, Leap, through its Cricket  
15 subsidiary, now offers -- bla-bla-bla.

16 And then they discuss Cricket as an  
17 example of that.

18 HEARING EXAMINER: All right. Thank you,  
19 sir.

20 MR. MITTLE: We will get there.

21 THE WITNESS: I stand corrected.

22 BY MR. MITTLE:

23 Q. My next question is then does your Counsel  
24 have any information of where the FCC has expressly  
25 recognized Cricket for the purposes of Track A?

1           A.     Well, I think by recognizing Cricket in the  
2 Sixth Annual Report, for what it's doing to replace  
3 wire-line services, it opens the door for us to  
4 propose Cricket's evidence here for our 271 filing.

5           Q.     Turning now to Page 6 of your Rebuttal  
6 Testimony, at footnote 11.

7           A.     Yes.

8           Q.     Did you write the footnote or did Mr. Munn?

9           A.     Mr. Munn did.

10          Q.     Do you think Mr. Munn knows that there's no  
11 47 U.S.C. 153(47) (A)?

12          A.     I don't know that.

13          Q.     On Page 7 of your Rebuttal Testimony, Lines  
14 17 through 19, the sentence that begins 'as a result'.

15          A.     (Witness refers to document.) Yes.

16          Q.     Could pricing be relevant for the purposes of  
17 the public interest?

18                 MR. MUNN:   Your Honor, I'll object to  
19 this question as being outside of the scope of  
20 Mr. Badal's Direct Testimony.

21                 The scope of this hearing is specifically  
22 not only Track A as opposed to public interest, but  
23 it's also the residential portion of Track A.  
24 Mr. Badal has not filed testimony and is not a witness  
25 as it relates to the public interest requirements of



1 the FCC. So it's completely beyond his testimony and  
2 the scope of this hearing.

3 MR. MITTLE: Mr. Teitzel opened up the  
4 Sprint Communications case decided by the United  
5 States Court of Appeals for the District of Columbia  
6 Circuit on December 28th last year in which the Court  
7 has examined the relationship between Track A and the  
8 public interest. To that extent, the door has been  
9 opened by Qwest.

10 I was just asking Mr. Badal if he had an  
11 understanding of whether pricing might be relevant for  
12 the purposes of the public interest.

13 MR. MUNN: Your Honor, I would suggest  
14 that we can address any objection to those questions  
15 at the time that Mr. Teitzel, who would be the one  
16 that Mr. Mittle has suggested has addressed this.  
17 That should be at least addressed to Mr. Teitzel. We  
18 can then discuss whether that's appropriate.

19 But it's clearly beyond the scope, and I  
20 take it from Mr. Mittle's comments, that there is  
21 nowhere in any of the testimony of Mr. Badal that  
22 would address any topic that relates to the public  
23 interest.

24 It's also beyond the scope of this  
25 hearing. So clearly beyond the scope of his testimony

1 and the hearing.

2 HEARING EXAMINER: Mr. Mittle, I think by  
3 your own comment that if Mr. Teitzel brought it up in  
4 his testimony, the question is probably more  
5 appropriate. Therefore, I'll sustain the objection.  
6 You can go on to your next question.

7 MR. MITTLE: Thank you, ma'am.

8 BY MR. MITTLE:

9 Q. Page 12, Line 23.

10 A. (Witness refers to document.)

11 Q. You use the word paradigmatic. Do you know  
12 what --

13 MR. MUNN: I didn't hear the page number?

14 MR. MITTLE: Page 12, the last line.

15 BY MR. MITTLE:

16 Q. Do you know what paradigmatic means?

17 A. A paradigm is a form of a model. It's an  
18 example.

19 Q. Did you write that part of your testimony?

20 A. Yes.

21 Q. Page 13, Lines 1 to 3.

22 A. Yes.

23 Q. You cite the report, which refers to the  
24 Sixth Report, found that 7 percent of Cricket's  
25 customers had dropped their home telephone lines

1 completely while 60 percent of Cricket customers use  
2 Cricket as their primary phone.

3 Do you see that?

4 A. Yes, I do.

5 Q. Do you know where that is in the Sixth  
6 Report?

7 A. I could not jump to it right away. There is  
8 no page number in the footnote.

9 MR. MUNN: Mr. Mittle, actually it's the  
10 footnote 34, different page numbering from these  
11 footnotes. I have a copy of the appropriate pages of  
12 that if it would assist anyone. You certainly don't  
13 have to use it. I just offer it if it's of value to  
14 Your Honor or --

15 MR. MITTLE: Actually, I've made a copy of  
16 the entire report.

17 HEARING EXAMINER: Without it having  
18 anything on it?

19 MR. MITTLE: Sorry I didn't do that for  
20 anybody else.

21 HEARING EXAMINER: Well, excellent.

22 BY MR. MITTLE:

23 Q. Now, your Counsel has directed us to Page 33  
24 and goes to Page 34.

25 A. Yes.

1 Q. Would it be more accurate to say instead of  
2 the report found, that the FCC found according to  
3 Leap?

4 A. Yes. Or say, yes the report reported that.

5 Q. Did the report draw the conclusion or did the  
6 report just cite the conclusion that Leap made for  
7 itself?

8 A. I would have to --

9 MR. MUNN: If it's appropriate, I could  
10 provide a copy. If your question is just to test his  
11 memory of the report, I'm not trying to interfere with  
12 the Cross-Examination.

13 HEARING EXAMINER: Do you have any  
14 objection to the man having the report in front of  
15 him?

16 MR. MITTLE: Not at all.

17 MR. MUNN: (Hands document to witness.)

18 BY MR. MITTLE:

19 Q. Well, if I could just cite you to Page 33.

20 A. (Witness refers to document.) Yes.

21 Mr. Mittles, I see on Page 33 that the report begins a  
22 paragraph saying a few wireless carriers have begun  
23 offering service, et cetera, et cetera. For example,  
24 Leap, through its Cricket subsidiary, now offers its  
25 comfortable wireless mobile telephone service in 12

1 markets, et cetera, et cetera.

2 Then at the bottom of that paragraph it  
3 says:

4 According to Leap, about half its  
5 customers view their phones as  
6 replacements for first or second lines.

7 Q. Right. So the FCC is just reporting what  
8 Leap is advertising?

9 A. Yes.

10 Q. On Page 13 of your Rebuttal Testimony --  
11 please hold on. I'm coming back to that. I'm trying  
12 to do this in order.

13 A. Okay.

14 Q. Page 13, Lines 7 and 8. You answer that  
15 neither witness, referring to Mr. Ripperger or  
16 Mr. Roth, respond to the FCC's discussion at Cricket.

17 Are you aware of who has the burden of  
18 proof in a Section 271 Application to the FCC?

19 A. I understand that Qwest will have the burden  
20 of proof.

21 Q. Do you understand that that burden of proof  
22 remains with Qwest at all times even if no party files  
23 comments?

24 A. Again, I'm not certain about that legal  
25 point. But I think -- well, my comment here was to

1 make the point that no one has objected to or found  
2 anything contradictory to refute what was stated in  
3 the report.

4 Q. Looking back at the FCC report, Page 33 to 34

5 --

6 A. Yes, sir.

7 Q. -- and do you have Page 34 in front of you?

8 A. Yes.

9 Q. The last sentence of the first incomplete  
10 paragraph, it starts:

11 In November 2000 Leap claimed...

12 Do you see that?

13 A. (Witness refers to document.) Yes, I do.

14 Q. And that refers you to footnote 225.

15 Is that correct?

16 A. Yes.

17 Q. And did you read what is referenced at  
18 available at 2001 West Law 7119447, an article by  
19 Debra Young?

20 A. Yes.

21 Q. You did?

22 A. Did I read it? No. I see it in the  
23 footnote.

24 Q. Did you read it?

25 A. No, I didn't.

1 MR. MITTLE: May I approach the witness,  
2 please?

3 HEARING EXAMINER: Yes, sir.

4 BY MR. MITTLE:

5 Q. Do you see the West Law reference number in  
6 the upper left-hand corner?

7 A. 7119447.

8 Q. Is that the same one that's mentioned in  
9 footnote 225?

10 A. Yes, it is.

11 Q. Could it be possible that the FCC made a  
12 mistake?

13 A. I think there must have been a typo here. Do  
14 you want me to read this?

15 Q. No, sir. I was just wondering if the FCC  
16 might have also made a mistake when they granted some  
17 Section 271 applications?

18 A. Do you really want me to answer that or do  
19 you want me to read this press release.

20 Q. I thought I'd just move on.

21 A. Okay.

22 Q. Well, wait. You speak Spanish, don't you,  
23 sir?

24 A. Yes, I do.

25 Q. And that is not Debra Young's usurping wire

1 services lofty goal, but dot-dot-dot, is it?

2 A. No. Actually, it's about the wife of George  
3 Bush.

4 HEARING EXAMINER: And the article is in  
5 Spanish?

6 THE WITNESS: Yes, it is.

7 MR. MUNN: Maybe we could get a  
8 translation. Now I'm curious.

9 BY MR. MITTLE:

10 Q. So in the FCC Sixth Report that Qwest relies  
11 on, they talk about a 7 percent -- well, in your  
12 testimony, I believe, Page 15, Line 7, we have  
13 discussed the 7 percent substitution rate?

14 A. Yes.

15 Q. And you base that on the numbers that are  
16 provided according to Leap.

17 Is that correct?

18 A. Yes. They are based on whether that's said  
19 nationally and what was repeated by the Albuquerque  
20 local manager.

21 Q. Has Qwest undertaken any attempt to determine  
22 what the substitution rate is in New Mexico, if any?

23 A. No. We just have made some calculations  
24 based on Cricket managers' statements about their  
25 market behavior.



1 Q. Mr. Witt asked you my next question, so we  
2 are moving right along to Page 20 of your Rebuttal  
3 Testimony.

4 A. (Witness refers to document.)

5 Q. There's a graphic at the bottom of the page  
6 through Line 13. Where was that graphic derived from?

7 A. I believe that we put that together.

8 Q. So is this truly who Cricket is competing  
9 against?

10 A. I firmly believe that Cricket is competing  
11 directly against the incumbent local exchange  
12 provider, wherever it operates. And here in New  
13 Mexico, that's in Albuquerque-Santa Fe. That's us.

14 Q. On Page 21 at Line 7, you refer to the Leap  
15 wireless press release of about 394,000 new Cricket  
16 customers?

17 A. Yes.

18 Q. Do you know how many of those new Cricket  
19 customers were substituting a wire-line?

20 A. Well, based on Cricket's statements, 60  
21 percent of them would have regarded the acquisition of  
22 Cricket service as a replacement for wire-line  
23 service.

24 Q. And that's based on Cricket's numbers?

25 A. Yes.

1 Q. Do you have any teen-aged children?

2 A. Yes, I have one left. She will be 20 in  
3 March.

4 Q. In your Direct Testimony, Page 3, you refer  
5 to a Cricket direct mailer targeted to consumers with  
6 teenage children.

7 A. Yes.

8 Q. There's a Cricket mailer attached as Exhibit  
9 JWB-2?

10 A. Yes.

11 Q. Was that the mailer that was mailed to you?

12 A. No. No, sir. I believe it was mailed to  
13 Mr. Olson.

14 Q. But you got the same mailer?

15 A. No. He provided me with that mailer.

16 Q. And I would like to move on to something that  
17 you said earlier about -- well, so you've testified  
18 that you have been in the telecommunications industry,  
19 familiar with New Mexico for 22-plus years?

20 A. Yes, sir.

21 Q. And that you believe you have a good -- as  
22 good a feel of the telecommunications market as anyone  
23 in the state?

24 A. I think so, yes.

25 Q. And that you believe you know the industry?

1 A. Yes, sir.

2 Q. You were presented with data from Intrado?

3 A. Yes.

4 Q. Just the bottom line number?

5 A. Yes.

6 Q. Based on your 22 years of experience, did  
7 that bottom line number pass the gut check?

8 A. Actually, it did.

9 Q. And you believe that there is that many  
10 facility-based residential lines in New Mexico?

11 A. When I first saw that number and after I read  
12 Antonuk's report stating that there was adequate  
13 competition in these other states and recognizing that  
14 we have a lot of DSL competition in the state or other  
15 companies providing DSL services, and recognizing,  
16 too, that DSL provides a voice channel as well as a  
17 data channel over its facility and just seeing the  
18 number of companies operating in the State of New  
19 Mexico, I believed that that number was correct.

20 Q. In December of 1999 what did you think the  
21 number of facilities-based residential lines was in  
22 New Mexico?

23 A. In December of 1999? I'm trying to think.  
24 I don't know if there would have been any  
25 facility-based residential competition at that time.

1 Q. I'd like to just refer you to something one  
2 more time.

3 A. Sure.

4 Q. Earlier you testified that when the  
5 facilitator made his conclusion that there was no  
6 competition in the residential market in New Mexico --

7 A. Facility-based; that's right.

8 Q. -- that Qwest filed -- took issue with the  
9 findings.

10 Is that correct?

11 A. Yes, we did.

12 Q. And in response to taking issue with the  
13 findings, Qwest filed additional evidence?

14 A. Yes, sir.

15 Q. In the form of your affidavit?

16 A. Yes.

17 Q. And then in the form of your testimony and  
18 Mr. Teitzel's testimony?

19 A. Yes.

20 Q. Is there anything else Qwest could have done?

21 A. Well, I imagine there were a number of things  
22 that Qwest could have done. But I think what we did  
23 we regarded as sufficient and, also, given the  
24 limitations of the time that we had to provide  
25 additional comment I think what we did was reasonable

1 and sufficient in the time given.

2 Q. Has Qwest taken any action since the  
3 facilitator's report to try to encourage or promote  
4 competition in the residential markets in New Mexico?

5 A. I could spend an entire day talking about  
6 what we are doing here locally to increase competition  
7 in the local market. We meet regularly with CLECs and  
8 other communities of telecommunications providers,  
9 IXC's and ISP's as well. We have those CLECs meet  
10 with our networking people regularly. We take them  
11 over to our central office. We discuss their billing  
12 issues with them to make, actually, their life easier  
13 here in the State of New Mexico.

14 If you would permit me to expand on this  
15 for a minute or so more, Mr. Mittle.

16 Having come from AT&T and retiring from  
17 AT&T in 1998 and then serving as a consultant on  
18 behalf of CLECs for a two-year period of time and  
19 having started a trade association in Arizona for  
20 CLECs and serving as the first President of that trade  
21 association, I consider myself a prime advocate of  
22 competition in the local exchange.

23 One of the things I think I can contribute  
24 to in my position is promoting an open market here. I  
25 think a reflection of that is that our wholesale

1 numbers here, our performance in meeting CLECs and our  
2 other wholesale customers' needs is at a higher level  
3 here in New Mexico than much of the rest of the  
4 country. We here in New Mexico have been in the top  
5 three states in our region in terms of performance  
6 measurements in serving the needs of our CLEC  
7 customers.

8 Q. Ultimately it comes down to profitability.

9 Is that not correct?

10 A. Mr. Mittle, I wouldn't agree with that  
11 totally. I think we all have obligations here to  
12 serve our customers.

13 Q. Well, not necessarily Qwest. I was talking  
14 CLECs are concerned about profitability?

15 A. Yes, and I think that we can make a very  
16 strong case to -- that there is strong potential for  
17 profitability in the wholesale market, that we can  
18 make money providing services to CLECs and they can  
19 make money providing retail services that are  
20 purchased wholesale from us.

21 Q. If Qwest lowered its UNE rates then that  
22 might be some way to encourage competition?

23 MR. MUNN: Your Honor, at this point I'll  
24 object. I am trying to stay quiet or sit on my hands  
25 as long as I can, but I think this is clearly beyond

1 the scope of Mr. Badal's affidavit or his Direct  
2 Testimony and also his Rebuttal Testimony.

3 This is not a public interest hearing.  
4 This is a hearing to address Track A and the  
5 residential portion of Track A, which is just  
6 evaluating what competitors are in the marketplaces.

7 CLECs' motivations or other issues are not  
8 addressed in any Track A analysis in any FCC Order.  
9 If it would be relevant anywhere, it would relate to a  
10 public interest issue if it's even relevant there.

11 Of course, the FCC has a lot to say about  
12 that, but it's clearly not a Track A issue. And it's  
13 clearly not within the scope of Mr. Badal's, any of  
14 his testimony.

15 MR. MITTLE: Madam Hearing Examiner, it's  
16 not the CLECs' focus that I'm concerned about. It's  
17 Qwest's focus. Track A is supposed to encourage and  
18 promote competition in the residential market.

19 The FCC is very concerned about  
20 competition in the residential market as part of Track  
21 A.

22 Mr. Badal has testified that he has an  
23 understanding that few of us will ever have of the  
24 residential market in New Mexico.

25 THE WITNESS: If I could say --

1                   MR. MUNN:    Your Honor, I would disagree  
2   that the FCC thinks that encouraging competition is an  
3   important component of Track A. Encouraging  
4   competition is something evaluated within a 271 docket  
5   but it's not within the scope of this hearing or Track  
6   A. That's the whole purpose of the competitive  
7   checklist to make sure the market is open to  
8   competition to allow competitors the ability to  
9   compete. Arguably, some parties would argue it is  
10   something to address in the public interest. But it's  
11   certainly not as it relates to Track A.

12                  HEARING EXAMINER: Your objection is  
13   sustained.

14                  Go ahead, Mr. Mittle.

15                  MR. MITTLE:   Then I would move to strike  
16   Mr. Badal's last response as outside the scope of this  
17   hearing and all that other good stuff, lawyer talk.

18                  HEARING EXAMINER: Well, I think Mr. Badal  
19   was giving his explanation as to -- in answering your  
20   question, so I think it was -- you were not kidding  
21   when you were -- do you have a serious Motion to  
22   Strike?

23                  MR. MITTLE:   Well, to the extent that my  
24   question was just a simple follow-up, I think  
25   Mr. Badal has testified -- we were trying to



1 investigate the signs that the facilitator found that  
2 Qwest did not make the requirements of Track A.

3 The question went to what other options  
4 were available to Qwest that was not necessarily  
5 mutually exclusive with filing additional testimony in  
6 this docket.

7 THE WITNESS: I can answer.

8 MR. MUNN: Your Honor, I didn't object to  
9 that general question.

10 MR. MITTLE: Then it was the follow-up.

11 HEARING EXAMINER: The follow-up was the  
12 question on the UNEs; right.

13 MR. MITTLE: Yes, as encouraging  
14 competition, whether that was something Qwest could do  
15 unilaterally.

16 HEARING EXAMINER: That was objected to  
17 and I sustained it. No, I'm not going to go back and  
18 strike the foundational question just for follow-up.

19 So go ahead, Mr. Mittle.

20 MR. MITTLE: Ms. Reilly?

21 MS. REILLY: Just exercising.

22 HEARING EXAMINER: Okay.

23 MR. MITTLE: I have nothing further.  
24 Thank you very much.

25 HEARING EXAMINER: Thank you, Mr. Mittle.

1 HEARING EXAMINER: Ms. Reilly.

2  
3 CROSS-EXAMINATION

4 BY MS. REILLY:

5 Q. Good afternoon, Mr. Badal.

6 A. Good afternoon, Ms. Reilly.

7 Q. I can't see any more. As far as I know, I  
8 only have one question for you.

9 I made notes when you were testifying, and  
10 you can connect me if I didn't write it down quite  
11 wrong -- I mean, quite right.

12 On a question by Mr. Mittle you said -- he  
13 was asking you about the Leap wireless FCC Form 10Q  
14 data, dated May of 2001, and whether or not Qwest  
15 could have brought that up at the multi-state. You  
16 said, apparently we could have. But more to the  
17 point, at the multi-state Qwest was relying on the FCC  
18 precedent saying it's okay to show a facilities-based  
19 -- it's okay to show residential and -- okay. Let me  
20 start over. It's okay to show facilities-based  
21 business competition and resale only for residential?

22 A. Yes.

23 Q. Is that your testimony?

24 A. Yes.

25 Q. You are not trying to suggest, are you, that

1 Qwest didn't present evidence of facilities-based  
2 residential competition at the multi-state, are you?

3 A. No, I'm not.

4 Q. Qwest did, didn't it?

5 A. Yes.

6 Q. Through Mr. Teitzel?

7 A. Yes.

8 Q. And that testimony was found by the Hearing  
9 Examiner to be unpersuasive?

10 A. Yes.

11 Q. And he did not consider it.

12 Is that right?

13 A. Yes.

14 MS. REILLY: That's all I have.

15 HEARING EXAMINER: Well, that was speedy.

16  
17 EXAMINATION  
18

19 BY THE HEARING EXAMINER:

20 Q. Good afternoon, Mr. Badal.

21 A. Yes, ma'am.

22 Q. Just so that I have a clear understanding in  
23 the record, sir, I'm going to start back with where we  
24 just were.

25 You made a point about New Mexico's

1 particular place in number in the region?

2 A. Yes.

3 Q. How many states are in the region?

4 A. We have 14 states in the region, Your Honor.

5 Q. Okay. So it's all the Qwest states, then?

6 A. Yes.

7 Q. Okay. I thought that there might be  
8 sub-groupings.

9 A. No.

10 Q. Okay, 14. Sir, also on that same topic when  
11 you were talking about the CLECs and facilities-based  
12 residential lines it brought up a question.

13 Certainly, sir, I'm not asking you to speculate. If  
14 you don't know, that's fine.

15 A. Yes.

16 Q. But I was wondering if you know how many  
17 interconnection agreements does Qwest have with  
18 facilities-based carriers providing residential  
19 service in New Mexico?

20 A. I know there are 70 or so CLECs, Your Honor,  
21 that have certificates to provide CLEC services here  
22 in the state. I would just speculate that nearly all  
23 of them are --

24 Q. No. I just want to know if you know how many  
25 interconnection agreements. You know that you filed

1 this interconnection agreement, sir, with the  
2 Commission?

3 A. Yes. Your Honor, I don't know the exact  
4 number, but there are multiples.

5 Q. Okay. So you believe that Qwest currently  
6 has interconnection agreements?

7 A. With --

8 Q. -- with facilities-based CLECs here?

9 A. With a good number of them, yes. That's  
10 right.

11 Q. But you don't know specifically how many?

12 A. We can get that information.

13 HEARING EXAMINER: As a Bench request, I  
14 would like for you to provide that information.

15 MR. MUNN: Yes, Your Honor, we will  
16 respond with that. I know that that information is in  
17 the record to the extent that the multi-state  
18 transcript and record is brought here to New Mexico.  
19 I can identify that.

20 But would you -- is the Bench request, so  
21 we benchmarked that at that point in time when we were  
22 filing evidence there. Would you like something for  
23 whatever the most recent month of data is that we  
24 have?

25 HEARING EXAMINER: Yes.

1 MR. MUNN: We can provide that.

2 HEARING EXAMINER: Yes, I think Mr. Olson  
3 is aware of that because I think the majority of your  
4 interconnection filings, if not all the filings, are  
5 handled through his law office. And I would  
6 specifically like the interconnection agreements  
7 identified as facilities or not facilities-based.

8 Tom?

9 MR. OLSON: I'm not sure that that  
10 distinction can be drawn from the interconnection  
11 agreements. Many times they provide for provision of  
12 UNES and resale. Some of them do just UNES, I  
13 believe. But I think it's hard to tell from the  
14 interconnection agreement what the CLEC is actually  
15 providing, if that's your question.

16 HEARING EXAMINER: And if you can't  
17 identify, it, that's fine, Tom. If you can, I'd like  
18 that information as a Bench request.

19 MR. OLSON: Okay. And I thought you asked  
20 about residential. And there is no way, I don't  
21 think, to discern from the interconnection agreement  
22 what classes of customers they are intending to serve.

23 HEARING EXAMINER: Again, if that's within  
24 the purview of your knowledge and you can provide that  
25 information, I would like it provided. If you can't,

1 you can say, this is the best we could do and here is  
2 the number we have, but we can't tell you if it's  
3 facilities-based.

4 MR. OLSON: Okay.

5 MS. REILLY: Matter of clarification. Is  
6 that request irrespective of whether or not they are  
7 actually providing service? At the multi-state  
8 Mr. Teitzel testified that several of the  
9 interconnecting CLECs were not actually providing  
10 service. That's why I raise it.

11 HEARING EXAMINER: Were not providing  
12 residential service?

13 MS. REILLY: There are companies that have  
14 interconnection agreements that are not operating in  
15 New Mexico at all.

16 HEARING EXAMINER: I don't know. Do you  
17 think --

18 MR. MUNN: Your Honor, if I can help with  
19 the clarification. The four-pronged analysis of  
20 Track A that Mr. Ripperger has acknowledged in his  
21 testimony and we've -- Qwest has acknowledged in its  
22 testimony, the first prong of that is whether you have  
23 binding interconnection agreements with carriers.  
24 There are three other prongs. But the first one,  
25 which I think your request is really going to, is do

1 you have interconnection agreements so we can check  
2 off the first prong.

3 I would note that Mr. Antonuk did find, I  
4 think, on Pages 73 or 74, somewhere around that, of  
5 his September Track A report, that Qwest meant that  
6 for New Mexico.

7 But we can then do the same exercise here.  
8 As Ms. Reilly has pointed out, that would address the  
9 first prong. It doesn't then go on to provide  
10 evidence that those carriers who have interconnection  
11 agreements are actually providing services.

12 So I think your request as stated is a  
13 relevant inquiry that can address the first prong of  
14 the analysis.

15 HEARING EXAMINER: And as far as the issue  
16 that we are here to determine, I'd like to know  
17 whether or not Qwest has knowledge of interconnection  
18 agreements that it has that have been filed with the  
19 Commission for facilities-based CLECs who may be  
20 providing services. If you don't know, that's fine,  
21 but that's what I want to know.

22 Once that is provided, if a party wants to  
23 comment about whether they are actually providing  
24 service or not, then you can do that in your post  
25 hearing briefs. Thank you.



1 BY THE HEARING EXAMINER:

2 Q. Now Mr. Badal, you may have already answered  
3 and maybe not. When Mr. Mittle was asking you about  
4 the market study information -- or, pardon me, market  
5 strategy information --

6 A. Yes.

7 Q. -- with the Cricket managers, my  
8 understanding was you were saying that the FCC, your  
9 perspective of the FCC's Order was that you could show  
10 market strategy information?

11 A. Yes.

12 Q. Where was that from? Do you know?

13 MR. MUNN: It's Paragraph 31 of the  
14 BellSouth Louisiana 2 Order. The FCC said, quote:  
15 Evidence of marketing efforts by broadband  
16 PCS providers designed to induce such  
17 replacement are also irrelevant.

18 HEARING EXAMINER: Tell me the page again.

19 MR. MUNN: It's Paragraph 31. I actually  
20 have a copy.

21 HEARING EXAMINER: Actually, I have that  
22 one. So BellSouth Louisiana the 2nd, Paragraph 31.

23 MR. MUNN: That's correct, Your Honor.

24 HEARING EXAMINER: All right.

25 MR. MITTLE: I would move to strike the

1 side-bar comment of Counsel. You asked Mr. Badal a  
2 specific question. Counsel responded by reading a  
3 simple portion of what was held in the second Order.

4 MR. MUNN: Your Honor, I think the  
5 question was where did the FCC hold that, and I simply  
6 addressed the paragraph and the actual quote where  
7 they held that, trying to be responsive to your  
8 question.

9 MR. MITTLE: That's not what the quote  
10 says and that's what I have a problem with. He is now  
11 mischaracterizing that that's what the FCC held. That  
12 is not what they held.

13 The discussion goes on for numerous  
14 paragraphs about what is required to show that a PCS  
15 is used to replace and not as a supplement to  
16 wire-line.

17 It should also be noted that this Order  
18 was rejected. I mean, BellSouth was not given  
19 permission to enter the long-distance market.

20 HEARING EXAMINER: All right, Mr. Mittle.  
21 I understand what you are saying. I don't think we  
22 necessarily have a problem here. I believe Mr. Munn  
23 was trying to provide me with the information, so I'm  
24 going to deny your Motion to Strike his comment.

25 I think that the actual interpretation of

1     what the FCC has said in all of its Orders that the  
2     parties believe are applicable to this case. You  
3     know, I fully expect all of you in the post hearing  
4     writings will give the Commission what your  
5     interpretation is and put whatever emphasis on  
6     acceptance and rejection and all of these other things  
7     that you think is appropriate.

8             MR. MUNN:     It is the last sentence of  
9     Paragraph 31.

10            HEARING EXAMINER:   That you relied on?

11            MR. MUNN:     Right. Just to clarify, I  
12     want to make sure there is nothing in the record that  
13     misstated that quote. I believe I've read this quote  
14     directly. I just don't want there to be any  
15     disparagement that I've misread the FCC order.

16            I understood Mr. Mittle to say I didn't  
17     read the entire Order to you, so that was his  
18     objection -- or the entire paragraph to you, so that  
19     was his objection.

20            I'm answering what we based that statement  
21     on which was in answer to your question. I think it's  
22     clear from a review that I've accurately read that. I  
23     just wanted to clear up any confusion.

24            MR. MITTLE:   The issue was whether it was  
25     responsive to your question, and it was clearly not

1 responsive. Same objection. Objection; move to  
2 strike; side-bar comment.

3 HEARING EXAMINER: All right. Denied. I  
4 heard what I wanted to hear. Go to Paragraph 31.  
5 That's what we relied on. Let's go on to the next  
6 one.

7 BY THE HEARING EXAMINER:

8 Q. Mr. Badal, when Mr. Witt was speaking or was  
9 asking you questions and he indicated to you -- he  
10 didn't indicate, he asked you specifically about this  
11 concept of de minimis.

12 A. Yes.

13 Q. Do you recall those questions?

14 A. Yes, I do.

15 Q. I believe you testified that de minimis meant  
16 to you a minimum quantity, but that you didn't want to  
17 say what that number was, but you were relying on the  
18 FCC because I believe you said that the FCC has  
19 determined what de minimis is.

20 Is that correct?

21 A. Yes, Your Honor. Yes.

22 Q. Okay. Where?

23 A. I would like -- well, let me say, too, that I  
24 was trying -- I think Mr. Witt asked me my  
25 interpretation or definition of de minimis. I think I

1 was trying to give him my understanding of its meaning  
2 from Latin to English. But I stated that I don't know  
3 the legal ramifications of de minimis. But I do  
4 recall, and I need a cite -- from an FCC Order that  
5 said that de minimis is not -- well, their conclusion  
6 was that de minimis has really nothing to do with  
7 quantity or market share. But actually, whether a  
8 competitor is a viable carrier or there's a carrier  
9 providing viable alternative service to the incumbent  
10 service.

11 That would be its finding of what de  
12 minimis means, that a carrier is viable and is not  
13 just in the market and out the next day.

14 Q. I appreciate that, Mr. Badal. I just want to  
15 know where your reliance is placed on what FCC Order  
16 or FCC document.

17 A. (Witness refers to document.) I used to know  
18 that, Your Honor. I'm just trying to --

19 Q. That's all right. Take your time, sir.  
20 That was a Paragraph 77, 76 and 78 of --

21 MR. MUNN: Your Honor, I could assist you  
22 in that. Or if you just want the witness to answer  
23 it, I can respond to a Bench request and have it here  
24 tomorrow.

25 THE WITNESS: I think it was Paragraphs

1 75 and 78 of its Michigan Order, the Ameritech  
2 Michigan Order, Your Honor.

3 HEARING EXAMINER: All right, sir.

4 BY THE HEARING EXAMINER:

5 Q. Sir, then later, upon your questioning by  
6 Mr. Witt -- and this might be the same, so you let me  
7 know if it is -- but I believe that you were -- well,  
8 you testified that all Qwest was seeking was to be  
9 held to the same standards as other RBOCs.

10 Of course, my question is what standards  
11 are you referring to? Does that relate back here to  
12 Paragraphs 75 and 78 or are these other standards?  
13 This was always in the context -- my note indicates  
14 that it's the whole thing about that it was your  
15 belief that the FCC opined, not a number, but other  
16 things and that you just wanted to be held to those  
17 same standards.

18 Again, my question to you is what specific  
19 standards are you referring to and can you give me an  
20 FCC Order number or case?

21 A. Your Honor, I was referring specifically to  
22 that discussion of de minimis with, again, citing  
23 Paragraphs 75 and 78 of the Ameritech Michigan Order.

24 Q. Okay.

25 A. But I was also speaking in more general terms

1 about having the regulatory bar set no higher for our  
2 271 petition in New Mexico than in any other state.

3 Q. All right, sir.

4 HEARING EXAMINER: Let me just say now  
5 generally to all the parties that in the Commission's  
6 Track A Procedural Order in this particular case --  
7 and this is the Order that was issued on November 6th,  
8 I believe on Page 8 at Paragraph G the Commission  
9 gives you in your post hearing writings and how those  
10 were supposed to be comported. I am adding an  
11 additional requirement at this time.

12 Therefore, I instruct the parties to  
13 include in this post hearing proposed findings of  
14 fact, conclusions of law and proposed Final Order and  
15 request for oral argument, which is what it looks like  
16 the document is called, there is an instruction that  
17 all parties will address the issue of de minimis and  
18 specific legal citations will be required to support  
19 the parties' understanding of what de minimis is and  
20 how it's supposed to be arrived at.

21 Thanks. I had to do that while I was  
22 remembering that.

23 MS. REILLY: Sorry. I'm the clarification  
24 queen.

25 HEARING EXAMINER: Yes, ma'am.

1 MS. REILLY: You mean in the filings that  
2 we otherwise do consistent with the Commission's Order  
3 to include that analysis, or would you like a separate  
4 filing?

5 HEARING EXAMINER: Put it all in that same  
6 document.

7 MS. REILLY: Yes.

8 HEARING EXAMINER: I'm sorry. That may  
9 have been in the document that you all viewed before.  
10 I don't know what to call it other than what Paragraph  
11 G calls it.

12 For those people who don't have it in  
13 front of you, basically G says that within 21 calendar  
14 days of the filing of the formal transcript in this  
15 hearing the interested parties shall file consistent  
16 with the procedure and the amended third Procedural  
17 Order, and then all those things I mentioned. That's  
18 how the Commission wants you to address the post  
19 hearing writings.

20 The good news is I'm not going to ask you  
21 to file specific briefs in the case. So you don't  
22 have to do that. You have to do what the Commission  
23 tells you to do in Paragraph 2.

24 BY THE HEARING EXAMINER:

25 Q. Mr. Badal, can we go to your affidavit on



1 Page 4? I'm trying to make sure that you haven't  
2 taken this part out. So you can tell me if you have  
3 and I'll go on.

4 A. (Witness refers to document.)

5 Q. Sir, at No. 5 in the last sentence -- I think  
6 5 is still in, isn't it?

7 A. Yes. Yes, it is, ma'am.

8 Q. That last sentence in there, and I'm most  
9 concerned with the last sentence, but the full  
10 sentence is:

11 This information shows that there is  
12 currently a significant number of CLECs  
13 who have received tariff approval by the  
14 Commission to provide local exchange  
15 service to residential customers and are  
16 now positioned to serve that market.

17 A. Yes.

18 Q. Explain to me what you meant by position to  
19 serve.

20 A. Well, Your Honor, with certification in hand  
21 and a tariff filed and approved by the Commission,  
22 these CLECs have no other impediment to get into the  
23 local market. They are now prepared to provide  
24 residential service. The next step is to buy services  
25 from us at wholesale or to install their own

1 facilities.

2 Q. Okay. Sir, back when you were -- and I can't  
3 remember if it was Mr. Witt or Mr. Mittle, but I had  
4 some confusion. You were talking about your affidavit  
5 around Page 8 and Page 9. You all were talking about  
6 different percentages.

7 For example, on Page 8 of your affidavits  
8 my first line has something about 7 percent?

9 A. (Witness refers to document.) Yes.

10 Q. And I didn't really understand. Are the  
11 numbers referred to in your affidavit the Cricket  
12 numbers, are those New Mexico-specific numbers or are  
13 those general Cricket numbers for its nationwide  
14 service?

15 A. Your Honor, actually both. These are numbers  
16 that were stated in a national release of the company  
17 and they were repeated by the general manager, the  
18 local general manager in that article, in the  
19 newspaper article.

20 Q. All right, sir. Mr. Badal, this is also  
21 pointing me to the right source. On Page 5 of your  
22 Rebuttal Testimony at Line 5 you talk about the  
23 facilitator already finding facilities-based business  
24 competition.

25 A. Yes.

1 Q. Can you point me to a specific part of the  
2 facilitator's report that finds that?

3 A. Your Honor, I don't have the report with me.  
4 Let's see if anyone else on our team does.

5 Do you have it memorized, David?

6 MR. MITTLE: No, but I have a copy.

7 (Counsel hands document to witness.)

8 THE WITNESS: Thank you. (Witness refers  
9 to document.)

10 MR. MUNN: Your Honor, may I help? If  
11 you are just looking for --

12 HEARING EXAMINER: You can just point me  
13 to the cite.

14 MR. MUNN: One place -- and I would like  
15 to go back tonight, I can look through the Order and  
16 find any other places -- but Page 85 of the Antonuk  
17 report is proposed conclusion there where it just  
18 addresses -- first of all, they find that Qwest meets  
19 the requirements for business and residential at Page  
20 73 for the first prong, and Page 74 for the second  
21 prong.

22 Then for the third and fourth prongs of  
23 the Track A analysis, which he then starts to address  
24 for all of the states, his proposed conclusion is on  
25 Page 85.

1           The only two areas where Qwest's evidence,  
2     according to Mr. Antonuk, did not meet the  
3     requirements for business and residence components of  
4     Track A was the residential market in New Mexico and  
5     the residential market in Idaho. That was his  
6     determination there.

7           HEARING EXAMINER: Page 85?

8           MR. MUNN: Yes, Your Honor.

9           HEARING EXAMINER: Thank you.

10    BY THE HEARING EXAMINER:

11       Q. Mr. Badal, that next sentence, I have a  
12    little trouble understanding. It says:

13           Qwest can fully satisfy the Track A  
14           requirements for the state by showing the  
15           presence of at least one CLEC serving more  
16           than a de minimis number of residential  
17           customers, either through resale or  
18           facilities-based including broadband PCS.

19           Now, here is my question: Are you saying  
20    that all Qwest has to show is there's a CLEC out there  
21    who's providing residential service by resale that  
22    it's providing it by facilities-based or that it can  
23    provide it by a combination of both? Or are you  
24    saying it can provide it any of those three ways?

25       A. Your Honor, I'm stating that it can provide

1 -- that we can satisfy the test by any of the three  
2 ways.

3 Q. Okay. So by resale only, by facilities basis  
4 only or by a combination of both?

5 A. Yes. Your Honor, John Antonuk, in his  
6 report, has even stated that we need to find or to  
7 have on record a provider, one provider offering  
8 services to our competitors.

9 Q. So you are relying on the facilitator's  
10 finding as the basis for how you can provide this,  
11 either resale or a combination?

12 A. Yes, Your Honor, and the FCC record as well.

13 Q. All right. And specifically, you are  
14 referring back to Page 85, again of the facilitator's  
15 report?

16 A. Let me take a look at the exact page.

17 Q. All right.

18 A. (Witness refers to document.)

19 MR. MITTLE: Just for the record, this is  
20 one of my continuing objections, this specific  
21 sentence. It asks for a legal conclusion.

22 HEARING EXAMINER: All right. Noted,  
23 Mr. Mittle.

24 MR. MUNN: Your Honor, while Mr. Badal is  
25 looking, could I point you to where the FCC has

1 addressed the one provider issue?

2 HEARING EXAMINER: Mr. Badal --

3 MR. MUNN: We will provide it in writing.  
4 If you are interested now, I could tell you where it  
5 is.

6 HEARING EXAMINER: Go ahead, sure. He did  
7 say the FCC and the facilitator.

8 MR. MUNN: Correct. And I think  
9 Mr. Badal is looking at the facilitator's Order now  
10 and I could do that in just a minute, too. But in the  
11 Ameritech Michigan Order, Paragraph 104, the last  
12 sentence of that Order and I'm not saying that this is  
13 the only place they have ever said it. This is one  
14 place that I know of off the top of my head where they  
15 said -- I'm sorry.

16 HEARING EXAMINER: Hold on. Wait.

17 MR. MUNN: Oh, I'm sorry.

18 HEARING EXAMINER: Mr. Mittle, is that one  
19 of the ones you gave me?

20 MR. MITTLE: Well, I sure can.

21 HEARING EXAMINER: No. Did you already?  
22 Oh, found it. That's 97298.

23 MR. MUNN: That's correct. This is on  
24 Page 57.

25 MS. REILLY: Page 57 of?

1 MR. MUNN: Of the Ameritech Michigan  
2 Order.

3 HEARING EXAMINER: Paragraph 104.

4 MR. MUNN: The last sentence says, quote:  
5 Because Ameritech has satisfied Section  
6 271(C)(1)(A) through its agreement with  
7 Brooks Fiber, we need not determine  
8 whether Ameritech has also satisfied this  
9 provision through its agreements with MFS,  
10 WorldCom and TCG.

11 HEARING EXAMINER: All right. Thank you  
12 sir.

13 BY THE HEARING EXAMINER:

14 Q. How goes the search there, Mr. Badal?

15 A. The search is not going well in the report  
16 itself. But I have the cite in either my Direct or my  
17 affidavit. I think I need to find that.

18 Q. All right. Well, in the interest of saving  
19 time, if you can provide that to me in the morning,  
20 that would be good.

21 A. That will be fine, Your Honor.

22 Q. This is just on Page 8 of your Rebuttal  
23 Testimony at Line 17.

24 A. (Witness refers to document.) Yes, Your  
25 Honor.

1           Q.   Where you are saying the FCC has acknowledged  
2   that the House of Representatives rejected a version  
3   of Track A that would have required a BOC to show that  
4   CLECs are capable of operating in, quote, service as  
5   comparable in price, features and scope to that  
6   offered by a BOC?

7           A.   Yes.

8           Q.   Sir, with the way that the sentence appears  
9   on the printed page, there seems to be three  
10   components:   Price, features and scope.  You  
11   italicize features and scope.  Why didn't you  
12   italicize price also?

13          A.   I think, Your Honor, that the question  
14   eliciting the response had to do with provision of  
15   service with the same features.  So I was highlighting  
16   that because I think it was the highlighted portion of  
17   that clause which was directly responsive to the  
18   question.

19          Q.   All right.

20                       Sir, on Page 15 at Line 1, you testify  
21   that FCC rules require a provider to reach 60 percent  
22   stabilization and then something about exhaustion  
23   rates.

24                       What rules would those be, sir?

25          A.   Your Honor, these are rules regarding the



1 allocation of numbers in blocks of 10,000. I don't  
2 have the cite with me as to what that -- what the  
3 number of that ruling is. But this is the FCC  
4 practice.

5 Q. I'd like a cite to that one, too, sir.

6 HEARING EXAMINER: Thank you, Mr. Badal.  
7 I appreciate it.

8 Mr. Munn, any Redirect of your witness?

9 MR. MUNN: Thank you, Your Honor.

10  
11 REDIRECT EXAMINATION  
12

13 BY MR. MUNN:

14 Q. Mr. Badal, in discussing -- or responding to  
15 some questions from Mr. Witt from AT&T, and then again  
16 in response to the judge's questions as well regarding  
17 your affidavit -- not your affidavit, your Rebuttal  
18 Testimony, if you could please turn to Page 16 of your  
19 Rebuttal Testimony.

20 A. (Witness complies.)

21 Q. Actually, the portion that you were also  
22 asked about your affidavit. The bottom of Page 7, the  
23 top of Page 8, dealing with the term cutting. I  
24 apologize.

25 If you could first turn to your affidavit,

1 please?

2 A. (Witness complies.) I have it.

3 Q. Okay. At the bottom of Page 7 and then if  
4 you could first identify who is this that's providing  
5 this information, the quoted information?

6 A. This is John Clark, the state's General  
7 Manager for Cricket.

8 Q. You were asked questions about the term  
9 cutting their home phone services.

10 A. Yes.

11 Q. Could you be more specific regarding what  
12 that term means?

13 A. I stated that it meant one of two things;  
14 disconnecting or replacing a second line. Actually,  
15 this cutting is the removal of either a primary or a  
16 secondary line for one reason or another. Here the  
17 reason is replacing wireless service for wire-line  
18 service, disconnecting wire-line primary service or  
19 secondary service.

20 Q. So, Mr. Badal, related to this term of  
21 cutting or disconnecting, which you have equated, what  
22 about replacement of wire-line service by, like, for  
23 example, Cricket, a PCS provider?

24 MR. MITTLE: Objection; leading.

25 THE WITNESS: Replacement means --

1 HEARING EXAMINER: I'll overrule it. Go  
2 ahead, Mr. Badal.

3 THE WITNESS: Thank you. Replacement  
4 means to me two things: That a customer has service,  
5 wire-line service and we disconnect it. Or, rather  
6 than purchase another wire-line service, the customer  
7 would order wire-line service.

8 But I think what Cricket is saying here is  
9 that its customers consider Cricket as a complete  
10 replacement for wire-line service, whether -- well,  
11 whether disconnected or not. They consider a  
12 wireless, the Cricket wireless service, as a total  
13 substitute for the incumbent wire-line service.

14 BY MR. MUNN:

15 Q. And Mr. Badal, you were asked questions about  
16 the Sixth Wireless Report. Do you still have a copy  
17 of that report with you?

18 A. (Witness refers to document.) I believe so,  
19 yes. Here it is.

20 Q. You have quoted in your testimony and were  
21 just asked questions about the statement about  
22 replacement.

23 Could you please look on Page 33 of the  
24 Sixth Wireless Order, the paragraph that starts, 'a  
25 few wireless carriers'?

1           A.     Yes.

2           Q.     The sentence starting 'according to Leap,'  
3     about half. If you would please look at that  
4     sentence. I just wanted you to take a look at the  
5     statement there and read it into the record as well as  
6     the statement at Page 7, bottom of Page 7, top of Page  
7     8 about the 7 percent cutting that Cricket has also  
8     stated.

9           A.     In the FCC's Sixth Report it states, and I  
10    quote:

11                 According to Leap, about half of its  
12                 customers view their phones as  
13                 replacements for first or second lines.  
14                 About 7 percent of its customers in its  
15                 Nashville and Chattanooga markets have  
16                 dropped their wire-line home phones  
17                 altogether.

18                 Now, do you want me to jump over to the  
19    affidavit?

20           Q.     Actually, you don't need to go to the  
21    affidavit. You don't need to go there.

22                 So, Mr. Badal, what does this mean to you  
23    when the FCC says that according to Leap, about half  
24    of the customers view their home phone as replacement  
25    and 7 percent are actually -- what's their term --

1 have dropped their wire-line phones altogether?

2 A. Well, this states quite simply what a lot of  
3 us in the telecom industry know is going on today and  
4 is increasingly occurring. For voice communications,  
5 wireless service is becoming more and more a total  
6 replacement for wire-line service.

7 Q. Based on the sentence you just read, what do  
8 you glean from how the FCC views replacement, which it  
9 says is about half, vis-a-vis what the FCC thinks  
10 about dropping wire-line service, which is a smaller  
11 number. It was the 7 percent figure about dropping.

12 A. Yes. In this report it's stated that about  
13 -- it reported that about half of Leap's wireless  
14 customers consider or are not using wire-line service  
15 now, now that they have Leap Wireless or Cricket  
16 Wireless service.

17 The 7 percent figure refers to Leap's  
18 statement that 7 percent of its customers actually  
19 disconnect wireless service for their Leap Wireless or  
20 Cricket Wireless service.

21 Q. So does that indicate that the FCC, at least,  
22 views replacement as much larger than just simply  
23 disconnecting?

24 A. Yes.

25 Q. In the response to one of Mr. Witt's

1 questions dealing with your Rebuttal Testimony, on  
2 Page 16 he had you, I believe, read the sentence from  
3 Line 1 to Line 4?

4 A. Yes.

5 Q. Then you were asked a question about is there  
6 any evidence that Cricket customers are the same in  
7 New Mexico.

8 Do you have anything more specific there  
9 to add with respect to your testimony that's there on  
10 Page 16?

11 A. Well, actually, yes. In the newspaper  
12 article -- the Albuquerque Journal article that is an  
13 attachment to my testimony -- this Cricket general  
14 manager for New Mexico actually states that the same  
15 thing nationally is occurring here in New Mexico.  
16 Seven percent of the customers are cutting service in  
17 favor of Cricket.

18 HEARING EXAMINER: Wait a second. I'm  
19 confused here. Help me out, Mr. Badal. It says in  
20 the newspaper article that 7 percent of national  
21 numbers or the 7 percent from the Nashville and  
22 Chattanooga markets that this quote just came from?

23 THE WITNESS: Well, the newspaper article  
24 references what is occurring in New Mexico, Your  
25 Honor.

1 HEARING EXAMINER: Okay.

2 THE WITNESS: Which reinforces what  
3 Cricket was saying at the national level.

4 HEARING EXAMINER: National level? Where  
5 did they say that?

6 THE WITNESS: I'm sorry. That would be  
7 as reported in the FCC's Sixth Wireless Report.

8 HEARING EXAMINER: But what you just read,  
9 sir, is specific to Nashville and Chattanooga. Isn't  
10 that what it says? Am I looking at the wrong place?  
11 7 percent of its customers in the Nashville and  
12 Chattanooga markets. I'm just trying to find out  
13 about the national quote you are referring to.

14 THE WITNESS: I was reading originally  
15 from the FCC's Sixth Report when I mentioned or quoted  
16 a mention of Chattanooga and Nashville.

17 HEARING EXAMINER: Okay.

18 THE WITNESS: But then I think Mr. Munn  
19 was asking me about the same behavior occurring in New  
20 Mexico.

21 HEARING EXAMINER: Right.

22 THE WITNESS: Then I read a portion of  
23 what the Cricket general manager stated about what was  
24 happening in Albuquerque -- or in New Mexico.

25 HEARING EXAMINER: Okay. I made the

1 connection there between Nashville and Chattanooga.  
2 Then I made the connection between the 7 percent from  
3 your thing in the affidavit. I'm just trying to  
4 figure out where 7 percent nationwide came from.

5 Hold on. Did you find it?

6 MR. MUNN: Your Honor, it's Attachment E  
7 to Mr. Badal's affidavit. It's the Albuquerque  
8 Journal article, February 22, 2001. About  
9 seven/eighths of the way down is the quote from the  
10 general manager for New Mexico for Cricket who says,  
11 quote:

12 One thing we are noticing is over 7  
13 percent of our customers are cutting their  
14 home phone services, Clark said.

15 MR. MITTLE: And what that never says is 7  
16 percent of our customers in New Mexico. This  
17 newspaper article is the best evidence of what it  
18 says.

19 The 7 percent is the marketing pitch being  
20 used by Leap. If Mr. Badal wants to say that this  
21 says that it applies to New Mexico he can testify  
22 however he wants. This is the best evidence of what  
23 it says. Any clear reading says that it says it's  
24 just 7 percent of Leap's customers.

25 THE WITNESS: I'm sorry, Your Honor. I



1 was reading this to mean when Mr. Clark said 7 percent  
2 of our customers, since he is the general manager for  
3 New Mexico and Cricket's operations in New Mexico, I  
4 read that clearly to mean his customers in New Mexico.

5 HEARING EXAMINER: Okay. Mr. Mittle, do  
6 you have an objection to me trying to find out where  
7 the 7 percent nationwide comes from?

8 MR. MITTLE: No. I have an objection to  
9 Mr. Munn characterizing that somehow the 7 percent  
10 states what it doesn't. What it says is what it says.

11 If he would just refer you to the -- you  
12 asked a question, where does it say national. He  
13 refers you to something that does not -- and then  
14 Mr. Badal draws that distinction to Albuquerque and  
15 New Mexico.

16 What's never there is any evidence.  
17 That's the same issue back to the Louisiana Second  
18 Report which says we want statistical data based on a  
19 random sample where it does not discuss the nature of  
20 the complementary services.

21 I have no objection to you asking these  
22 gentlemen wherever they think the numbers come from.  
23 To the extent that it's legal argument by Counsel, I  
24 do object.

25 HEARING EXAMINER: All right, Mr. Mittle.

1 And Mr. Badal, did we find the specific reference to a  
2 national 7 percent or where you got your understanding  
3 of the 7 percent?

4 THE WITNESS: My basic understanding of  
5 that, Your Honor, is from the FCC's Sixth Wireless  
6 Report. The national figure I'm using -- I'm sorry  
7 that -- this is a document that originates where I  
8 consider at the national level. It's not within the  
9 region. It originates in Washington, D.C. It states  
10 what is happening in other parts of the nation, in  
11 Nashville and Chattanooga.

12 HEARING EXAMINER: All right, sir. Thank  
13 you. How much more time do you have, Mr. Munn?

14 MR. MUNN: Not much, Your Honor. This  
15 will be very brief.

16 HEARING EXAMINER: How many questions?

17 MR. MUNN: Looks like four but a couple  
18 of them may have been eliminated in your questioning  
19 of Mr. Badal.

20 HEARING EXAMINER: Since we have to come  
21 back for any potential further requests, why don't we  
22 stop at this point and we will start back fresh at  
23 9:00 o'clock tomorrow morning.

24 MS. REILLY: Do we have to be fresh?

25 HEARING EXAMINER: Absolutely. I'm not

1 going to go there. This appears to be a good stopping  
2 place. We are recessed until 9:00 o'clock tomorrow  
3 morning.

4 (Whereupon, the hearing in the above  
5 matter was adjourned.)

6 \* \* \*

STATE OF NEW MEXICO     )  
                                      )  
COUNTY OF SANTA FE     )     SS.

REPORTER'S CERTIFICATE

I, Patricia O'Brien, Certified Court Reporter and Notary Public of the firm SANTA FE DEPOSITION SERVICE, do hereby certify that the following transcript is a complete and accurate record of said proceedings as the same were recorded by me or under my supervision.

Dated at SANTA FE, NEW MEXICO, this 28th day of January, 2002.

A handwritten signature in black ink, reading "Patricia O'Brien", written over a horizontal line.

Patricia O'Brien, CCR  
Certified Court Reporter No. 1  
License Expires: 12/31/2002

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

1. THE WITNESS: JOHN BADAL

Direct Examination by Mr. Munn	32
Cross-Examination by Mr. Witt	50
Cross-Examination by Mr. Mittle	58
Cross-Examination by Ms. Reilly	96
Examination by the Hearing Examiner	97
Redirect Examination by Mr. Munn	119

E X H I B I T S

	<u>Marked</u>	<u>Admitted</u>
QWEST EXHIBIT NO. 1	33	49
QWEST EXHIBIT NO. 2	33	49
AG EXHIBIT NO. 1	73	75